

156.

APPROVAL, BONDS OF VILLAGE OF ARCHBOLD, FULTON COUNTY, \$5,000, TO PURCHASE LAND FOR WELL AND PUMP SITE FOR IMPROVEMENT OF WATERWORKS PLANT.

COLUMBUS, OHIO, March 17, 1923.

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

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157.

SCHOOLS—ADJOINING SCHOOL DISTRICTS UNITING UNDER SECTION 7669 G. C.—CANNOT LEVY TAXES UNDER SECTION 7630-1 G. C. AND USE PROCEEDS.

*SYLLABUS:*

*Adjoining village school districts uniting under section 7669 G. C. for union high school purposes, cannot levy taxes and issue bonds under section 7630-1 G. C. and use the proceeds thereof for the erection of a union high school.*

COLUMBUS, OHIO, March 19, 1923.

HON. ARTHUR W. DOYLE, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of a communication from Hon. W. A. Spencer, Assistant Prosecuting Attorney, in which the following statement and question are submitted:

“The board of education of Northfield and Macedonia school districts, which are adjoining village school districts, have by virtue of section 7669 General Code, adopted a resolution by a majority vote of the membership of each board to unite said school districts for high school purposes. Both of the said school districts have a high school building, the use of which has been prohibited by an order of the Industrial Commission of Ohio. Both districts are without sufficient funds with which to rebuild, repair, or construct a new building or a union high school.

“*Question:* Have these two school districts the authority, under section 7630-1, to levy taxes and issue bonds and use the proceeds thereof for the erection of a union high school in one of the now existing districts?”

Section 7669 G. C. reads as follows:

“The board of education of two or more adjoining school districts, by a majority vote of the full membership of each board, may unite such districts for high school purposes. Each school also may submit the question of levying a tax on the property in their respective districts for the purpose of purchasing a site and erecting a building, and issue bonds, as is provided by law in case of erecting or repairing school houses; but such question of tax levy must carry in each district before it shall become operative in either. If such boards have sufficient money in the treasury to

purchase a site and erect such building, or if there is a suitable building in either district owned by the board of education that can be used for a high school building it will not be necessary to submit the proposition to vote, and the boards may appropriate money from their funds for this purpose."

The latter part of this section provides that if such boards of education have sufficient money in the treasury to purchase a site and erect such building, it will not be necessary to submit the proposition to a vote and the boards may appropriate money from their funds for this purpose. Your statement indicates that both boards in question are without such funds. This situation leads to the irresistible conclusion that said boards must submit to the vote of the electors the question of a tax levy and bond issue for the purposes of purchasing a site and erecting a building, unless a way out is to be found in section 7630-1, General Code.

Section 7630-1 reads as follows:

"If a school house is wholly or partly destroyed by fire or other casualty, or if the use of any school house or school houses for their intended purpose is prohibited by an order of the Industrial Commission of Ohio or its successor in such authority, and the board of education of the school district is without sufficient funds applicable to the purpose, with which to rebuild or repair such school house or to construct a new school house for the proper accommodation of the schools of the district, and it is not practicable to secure such funds under any of the six preceding sections because of the limits of taxation applicable to such school district, such board of education may issue bonds for the amount required for such purpose. For the payment of the principal and interest on such bonds and on the bonds heretofore issued for the purpose herein mentioned and to provide a sinking fund for their final redemption at maturity, such board of education shall annually levy a tax as provided by law."

In a former opinion of this office, Opinions of the Attorney General for 1914, Vol. 2, page 1128, appears the following statement:

"If a board of education deems it necessary to secure a new site in order to replace a school house condemned or destroyed, the tax levies necessary for the purposes of such site are not within the exemption of section 7630-1 and 7630-2, General Code, but must be made within all the limitations of the Smith one per cent. law."

Under this ruling it would seem that section 7630-1, General Code, would not be sufficient to meet all the needs of a union high school erected under section 7669, General Code, even though said section 7630-1 G. C. was otherwise applicable.

Upon further analysis of section 7630-1, General Code, the following language will be noted:

"If \* \* \* the board of education of the school district is without funds applicable to the purpose, with which to rebuild or repair such school house or to construct a new school house for the proper accommodation of the schools of the district, and it is not practicable to secure such funds under any of the six preceding sections \* \* \*, such board of education may issue bonds for the amount required for such purpose",

thus confined the issue of bonds under said section to the purposes of the district issuing same.

This conclusion is further supported by section 5654, General Code, the first sentence of which reads:

"The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided."

This section clearly provides that the proceeds of a bond issue *shall not be used for any other purpose than that for which the same was issued*. Bonds issued under the provisions of section 7630-1 G. C. must be issued for the purposes of the schools of the district issuing same.

Therefore, having in mind the provisions of section 5654, as well as the provisions of the two sections referred to in your statement (7669 and 7630-1), you are advised that the two school districts in question cannot levy taxes and issue bonds under section 7630-1, General Code, and use the proceeds thereof for the erection of a union high school in one of the now existing districts, as provided in section 7669 G. C.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

158.

LAW EXTENDING HUNTING SEASON FOR CERTAIN GAME BIRDS—  
INCONSISTENT WITH "MIGRATORY BIRD TREATY"—INVALID.

*SYLLABUS:*

*The provisions of House Bill No. 413 to amend section 1403 of the General Code, relative to extending the hunting season for certain game birds, are inconsistent with the "Migratory Bird Treaty" concluded between the United States and Great Britain, and also with the laws of Congress and proclamations made thereunder, and said Bill, if enacted into law, would therefore be invalid and inoperative.*

COLUMBUS, OHIO, March 19, 1923.

HON. WALTER F. KIRK, *Chairman, Committee on Fish and Game, Ohio House of Representatives, Columbus, Ohio.*

DEAR SIR:—You have submitted to this department a copy of House Bill No. 413, Mr. Wiley, to amend section 1403 of the General Code, relative to extending the hunting season for certain game birds. You ask my opinion as to the constitutionality of said bill.

The answer to your inquiry requires a consideration of the Federal Regulations in regard to Migratory Birds.

On December 8, 1916, a treaty between the United States and Great Britain was proclaimed by the President. It recited many species of birds in their annual migration traversed certain parts of the United States and of Canada, that they were of great value as a source of food and in destroying insects injurious to