

909.

PUBLIC LIBRARY TRUSTEES—POWER TO ISSUE NOTES IN ANTICIPATION OF REVENUE—UNIFORM BOND ACT—EXCEPTION BY SECTION 2293-4, GENERAL CODE—NOT A TAXING AUTHORITY.

SYLLABUS:

1. *Section 2293-4, General Code, in conferring upon the board of public library trustees the power to issue notes in anticipation of the collection of current revenues in and for any fiscal year, is to be considered a special power and an exception to the general provisions of the Uniform Bond Act.*

2. *Inasmuch as a board of public library trustees is not considered a taxing authority under Section 2293-1, General Code, the mandatory provisions of Section 2293-27, General Code, shall not apply to notes issued in anticipation of the collection of current revenues by a board of public library trustees.*

COLUMBUS, OHIO, July 23, 1937.

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

GENTLEMEN: I am in receipt of your letter requesting my opinion which reads as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 2293-4, General Code, paragraph 2, authorizes boards of library trustees to anticipate future revenues by issuing notes.

Section 2293-27, General Code, requires taxing authorities to offer such notes to their respective boards of sinking fund trustees. A board of library trustees is not a taxing authority, as we understand the provisions of Section 2293-27.

QUESTION: In the event a board of library trustees issues a note under the provisions of Section 2293-4, and such library has a bonded indebtedness and a sinking fund commission, is the board required by the provisions of Section 2293-27 to submit the notes to the sinking fund commission before offering them for sale?"

Sections 4013 to 4018, both inclusive, General Code, which were the sections giving to the board of library trustees the power to borrow

money and establish their own sinking fund trustees, were repealed by implication by the Uniform Bond Act and the Budget Law enacted by the 87th General Assembly, and therefore in the instant case, the board of library trustees at this time should not have in existence a sinking fund commission or a retirement fund established for the purpose of retiring the outstanding note or bond issues of the library board. I direct your attention to a former Attorney General's opinion for 1930, Vol. I, page 800. The syllabus reads as follows:

“Sections 4013 to 4018, General Code, both inclusive, are repealed by implication by the Uniform Bond Act and the Budget Law, enacted by the 87th General Assembly, notwithstanding the fact that there may be outstanding bonds issued by a board of library trustees of a school district prior to the effective date of such acts.”

This opinion discussed very thoroughly the question as to how outstanding note or bond issues of the board of library trustees were to be retired after the effective date of the Uniform Bond Act and the Budget Law. On page 802, the third paragraph reads as follows:

“It is obvious that the Budget Law has defined the board of education as the taxing authority of a school district and has vested that board with authority to levy taxes for the payment of outstanding term and serial bonds; also that unless a school district has outstanding term bonds, there is no longer any authority for the establishment of a sinking fund; also all revenue derived from general or special levies for the purpose of meeting principal and interest obligations on outstanding bonds, must be paid into the bond retirement fund or into the sinking fund of the district. There is no provision in the Budget Law for the payment of such revenue into a library sinking fund.”

On page 803 of this opinion, the second paragraph further discusses the retirement of outstanding notes or bonds of the board of library trustees and I herewith quote the pertinent part of this paragraph:

“Obviously the library sinking fund established pursuant to Sections 4013, et seq., was abolished by the enactment of the Budget Law. If the outstanding bonds are serial bonds, taxes levied by the board of education to meet their principal and

interest requirements must now be paid into the bond retirement fund of the school district. If the outstanding bonds are term bonds, such taxation revenues must be paid into the sinking fund of the school district.”

It will be seen from this opinion that at present a board of library trustees has no power to establish a sinking fund commission or bond retirement fund for the retirement of any outstanding bonds issued in behalf of the board of library trustees, inasmuch as the Uniform Bond Act and the Budget Law by implication repeal Sections 4013 to 4018, General Code, and destroyed the taxing power of a board of library trustees and at the same time vested the same in the board of education of the school district.

Section 2293-4, General Code, authorizes the taxing authority of any subdivision to borrow money and issue notes in anticipation of the collection of current revenues in and for any fiscal year. In addition to clothing the taxing authorities with this power, this section went further in the second paragraph and conferred like power upon any board of public library trustees or board of township park commissioners to which the budget commission had allotted a share of the undivided property tax fund collected within the county. This section therefore, in so far as the same applies to a board of public library trustees, must be considered an exception to the Uniform Bond Act.

I direct your attention to a former Attorney General's opinion for 1932, Vol. I, page 324. In the body of this opinion at page 326, the second paragraph reads as follows:

“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 Amended Senate Bill 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.”

It will be noted that Amended Senate Bill No. 323 referred to in the opinion just cited was limited, in so far as the power of the board of library trustees to borrow money was concerned, to the years 1932 and 1933. The last enactment of legislation vesting such a power in a board of public library trustees is to be found in Amended Senate Bill No. 30, 115 O.L. 548, and it will be noted that the section vesting such

power in a board of public library trustees has been given the code number of Section 2293-4.

Section 2293-27, General Code, reads as follows:

“Before selling any notes or bonds of the subdivision, the *taxing authority* shall offer the same at par and accrued interest to the trustees or commissioners or other officers who have charge of the sinking fund of the subdivision and such officers shall have the option of purchasing said notes or bonds, or rejecting the same.”

You will note from the language of this section that it is mandatory upon the *taxing authority* to offer such bonds or notes to the trustees or commissioners or other officers who have charge of the sinking fund of the subdivision; and it necessarily follows for a determination of your question to define the words “taxing authority”. Section 2293-1, which is the first section of the Uniform Bond Act, sets forth very clearly definitions of various terms used in the Uniform Bond Act. Paragraph c. of Section 2293-1, *supra*, reads as follows:

“‘Taxing authority’ or ‘bond issuing authority’ shall mean in the case of a 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.”

It will therefore be noted that nowhere in the Uniform Bond Act is the term “taxing authority” conferred upon or used in connection with a board of public library trustees.

I am therefore of the opinion that Section 2293-4, General Code, in conferring upon the board of public library trustees the power to issue notes in anticipation of the collection of current revenues in and for any fiscal year, is to be considered a special power and an exception to the general provisions of the Uniform Bond Act, and that inasmuch as a board of public library trustees is not considered a taxing authority under Section 2293-1, General Code, the mandatory provisions of Section 2293-27, General Code, shall not apply to notes issued in anticipation of the collection of current revenues by a board of public library trustees.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*