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1. SCHOOL DISTRICT, LOCAL—AUTHORIZED ISSUANCE OF BONDS—PURPOSES, TO CONSTRUCT AND EQUIP FIREPROOF ADDITIONS TO EXISTING SCHOOL BUILDINGS—BOARD OF EDUCATION MAY ISSUE BONDS OF LESS AMOUNT AND USE PROCEEDS OF SALE TO BUILD CONCRETE BLOCK ADDITION TO EXISTING SCHOOL BUILDING—FABRICATED STEEL ADDITION—INCOMBUSTIBLE MATERIALS—REGULATIONS OF STATE FIRE MARSHAL FOR FIREPROOF CONSTRUCTION.
2. WHERE BONDS ISSUED TO CONSTRUCT AND EQUIP FIREPROOF ADDITIONS TO EXISTING SCHOOL BUILDINGS—NO AUTHORITY FOR BOARD OF EDUCATION TO USE FUNDS TO INSTALL NEW FURNACE IN EXISTING SCHOOL BUILDINGS UNLESS NEW FURNACE IS NECESSARY TO ADEQUATELY HEAT NEW ADDITIONS TO EXISTENT SCHOOL BUILDINGS.

SYLLABUS:

1. Where a local school district, by the requisite majority of the electors of such district, has authorized the issuance of bonds for "the purpose of constructing and equipping fireproof additions to existing school buildings" the board of education of such district may issue bonds thereunder of less amount than that authorized and use the proceeds of the sale of such bonds for the purpose of building a concrete block addition to its existing school building or for the purpose of building a fabricated steel addition to its existing school building provided such fabricated steel addition is covered with incombustible materials as required by, and in conformity with, the regulations of the State Fire Marshall for fireproof construction.

2. Where bonds are issued by a school district for "the purpose of constructing and equipping fireproof additions to existing school buildings" the board of education is not authorized to expend any portion of the proceeds of the sale of such bonds for the purpose of installing a new furnace in the presently existing school buildings unless such new furnace is necessary to adequately heat the new additions to the existing school buildings.

Columbus, Ohio, April 26, 1949

Hon. Jack H. Critchfield, Prosecuting Attorney
Wayne County, Wooster, Ohio

Dear Sir:

This will acknowledge receipt of your recent request for my opinion reading as follows:

"At the last general election Congress Local School District, Wayne County, Ohio voted a bond issue for \$77,000.00 for 'the purpose of constructing and equipping fireproof additions to existing school buildings.'

It now appears that the \$77,000.00 is not enough money to build what was anticipated at the time the bond resolution was passed and the issue passed by the voters.

However, it does seem possible that for less money the board could construct a concrete block addition or possibly a fabricated steel addition.

The weighted average of the amount to be expended in the transcript was 23 years.

Under the above state of facts would you give me your opinion on the following:

(1) Could the board sell bonds under this issue for less than \$77,000.00 for the construction of concrete block addition to existing school buildings?

(2) Could the board sell bonds under this issue for less than \$77,000.00 for construction of fabricated steel addition to existing school buildings?

(3) Could the board sell bonds under this issue for installation of a new furnace in the present school buildings?"

The authority of your board to issue bonds for less than the amount authorized by the voters of the district is authorized by Section 2293-26 of the General Code which reads as follows:

"If the taxing authority decides not to issue such anticipatory notes, or, if such notes are issued, when they are about to fall due, the taxing authority shall adopt a resolution or ordinance determining whether the bonds are to be issued in one lot or in installments, and fixing the amount of the bonds to be presently issued which shall not be greater than the amount authorized; fixing their purpose in accordance with the prior resolution or

ordinance of the taxing authority; and fixing the date, rate of interest and maturity which, however, need not be the same as those fixed in the prior resolution or ordinance. If it is determined to issue bonds in installments, then a similar resolution or ordinance shall be adopted whenever a new installment of such bonds is to be issued. The resolution or ordinance provided for in this section shall provide for the levying of a tax sufficient in amount to pay the interest on and retire at maturity all of the bonds covered by said resolution or ordinance; but the amount of the tax to be levied in any year may be reduced by the amount to be available for such purposes from special assessments, revenues and surplus funds of public utilities, any surplus in the fund from which such bonds are to be retired, or other moneys specifically assigned by law for such debt charges and not otherwise pledged or obligated. A copy of such resolution or ordinance shall be certified by the fiscal officer of the subdivision to the county auditor of the county in which such subdivision is located. When anticipatory notes are not to be issued, the resolution or ordinance required by section 2293-25 may be incorporated in and made a part of the resolution or ordinance required by this section. The taxing authority may combine in a single issue bonds for any number of improvements constituting one purpose as defined by section 2293-20 of the General Code."

Thus from the terms of the above statute a bond-issuing authority at the time of enacting its resolution to issue bonds previously authorized, must fix the amount of the bonds which it desires to issue at that time, limited only to the extent that the maximum amount issued shall not exceed the amount authorized. The minimum amount which such issuing authority may issue at one time for an improvement to be made solely from proceeds of a bond issue would be limited by Section 5625-33, General Code, to the amount required to meet the contract or contracts intended to be entered into for such improvement. (1928 O.A.G. No. 1678 at page 319.)

Your inquiry as to whether the bonds may be issued for constructing concrete block or fabricated steel additions to existing school buildings is entirely a question of fact. It is provided by Section 2293-2, General Code, in part, as follows:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct."

A permanent improvement is defined by Section 2293-1 to be any property, asset or improvement with an estimated life or usefulness of five years or more, including reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more. The declared purpose of your bond issue as authorized by the voters would conform to the requirements of the foregoing sections.

It is further provided by Section 5625-10, General Code:

“Money paid into any fund shall be used only for the purpose for which such fund is established.”

The purpose of the bond issue quoted in your letter is quite broad. Assuming this purpose was contained in all proceedings had with reference to the submission of the issue to the voters as well as the purpose stated in the ballot it was not based upon, nor did it make any reference to any specific plan or type of addition, except that they be of fireproof construction, and in my opinion any steps that would be taken leading to the desired end would fall within the scope of its purpose.

The particular problem with which you are confronted would be whether the type of material used in construction would conform to these requirements. Section 12600-73, General Code, defines fireproof construction as that type in which all structural parts carrying weights or resisting strains and all exterior and interior walls, partitions, stair, elevator and other enclosures are composed entirely of incombustible materials with all metallic structural members protected from the effects of fire and water by a covering of materials entirely incombustible and slow heat conductors. I am advised by the Division of Workshops and Factories of the Department of Industrial Relations of the State of Ohio that concrete block material is incombustible and when used for construction purposes is classified as fireproof construction. They further have advised that fabricated steel construction is not considered fireproof construction material unless it be covered, in accordance with their specifications, with certain additional materials which are classified as incombustible.

From the nature of your inquiry it is observed that a further problem might possibly present itself if the structure or structures proposed were to be constructed as separate buildings, not attached to or connected with the present structure or building. The answer to this depends upon the meaning of the word “additions” as stated in the declared purpose of the

bond issue. Webster's New International Dictionary defines the word "additions," as applied to buildings, as follows:

"A part added to a building, either by being built so as to form one architectural whole with it, or by being joined with it in some way, as by a passage, and used so that one is a necessary adjunct or appurtenance of the other, or so that both constitute in use and purpose one and the same building."

Black's Law Dictionary defines the word with reference to the law of insurance as meaning a part added or joined to a main building and as applying to buildings appurtenant to some other building though not in physical contact therewith. In *Lewis v. State, ex rel. Kramer*, 69 O. S. 473, 69 N. E. 980, at page 481 of the Ohio State Report it was stated:

"An 'addition' to an existing building is generally constructed on the ground and annexed to the original building, or placed on top of the same."

It is therefore my opinion that such additions would be proper even if erected as a separate structure or structures from the main building, if located upon the same plot of ground as the present structure and used in conjunction therewith.

Coming to your last question, it will be noted that the purpose of the issue, as set forth above, makes reference to the construction and equipping of the proposed additions only. No words are contained therein which could reasonably be interpreted as indicating an intent to equip or improve the presently existing structure. Section 2293-29 states in part as follows:

"The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds are issued and sold and used only for the purpose set out in the resolution or ordinance of the taxing authority, and all moneys from premiums and accrued interest, shall be paid into the sinking fund or bond retirement fund from which said bonds or notes are to be redeemed."

It will thus be seen that no part of the proceeds of the sale of these bonds could be used for new equipment in the present school buildings.

It is perceived that one heating plant might be contemplated and preferred as a heating plant for the supply of heat to the proposed additions, as well as the presently existing school building. A source of heat is necessary for such new structure or structures and any reasonable

means of obtaining the same would be within the scope of the declared purpose of equipping such additions. Such source would not of a necessity be required to be located within a new addition. If, therefore, the presently existing heating plant were inadequate to supply the additional structure or structures with an adequate supply of heat, and it is, in the opinion of the board of education, more practical to have one heating plant for both the present school building and the proposed additions it would be my opinion that a part of the proceeds of the sale of the bonds issued under the proceedings of your board could properly be used to install a new furnace in the existing school building of a sufficient size to adequately supply both the present structure and the new addition or additions thereto. It is my opinion that such procedure would be properly classified as part of the necessary equipping of such proposed addition or additions.

In direct answer to your questions it is my opinion that :

(a) The board of education under the proposed bond issue could issue less than the full amount of bonds authorized and construct a concrete block addition to the existing school buildings.

(b) The board of education under the proposed bond issue could issue less than the full amount of bonds authorized and construct a fabricated steel addition to the existing school buildings, provided such fabricated steel is covered with incombustible materials as required by, and in conformity with, the requirements of the State Fire Marshal for fireproof construction.

(c) The board of education could not use a portion of the proceeds of the sale of bonds proposed to be issued for the purpose of installing a new furnace in the present school buildings unless such new furnace were necessary to adequately heat the proposed additions to the present building.

Respectfully,

HERBERT S. DUFFY,
Attorney General.