

Code, presumably on account of lack of familiarity with and knowledge of the Public Utilities Commission Code. * * * ”

It was held in such opinion as disclosed by the first paragraph of the syllabus :

“1. A special constable cannot be appointed under section 3331, General Code, for the general purpose of enforcing the provisions of section 614-92, General Code, since the appointment of a special constable under section 3331, General Code, is limited to the particular occasion for which the special constable is appointed. (Opinions of the Attorney General for 1931, page 1162, followed and approved.)”

It will be noted that my said opinion did not consider whether or not a special constable might be appointed to patrol state highways to enforce orders of the public utilities commission, by virtue of section 1738, General Code. The question was specifically raised only as to the power of appointment under section 3331, General Code, and consequently the exact question you raise as to section 1738, General Code, was not discussed. However, in following the 1931 opinion, which disposed of the question of the applicability of section 1738, General Code, to state highways, in the negative, I did not deem it necessary to go further in approving such opinion than the specific question presented in the communication addressed to me warranted.

It appears to me that the interpretation of section 1738, General Code, as disclosed by the 1931 opinion, is a proper one, and I am therefore of the opinion, in specific answer to your question, that a justice of the peace may not appoint a special constable under section 1738, General Code, to patrol state highways in his county for the purpose of arresting violators of orders of the Public Utilities Commission of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3266.

BOARD OF EDUCATION—PROPERTY VESTED THEREIN NOT SUBJECT TO LEVY OR ATTACHMENT BY JUDGMENT CREDITORS—MANDAMUS WILL LIE TO COMPEL SATISFACTION OF JUDGMENT BY APPROPRIATION OF FUNDS.

SYLLABUS:

1. *Real or personal property vested in a board of education for school purposes may not be levied upon or attached by judgment creditors nor may funds distributable to a board of education by way of tax settlements be so levied upon or attached. Mandamus will lie to compel a board of education to appropriate funds in its possession and available for the purpose, to the payment of final judgments rendered against the board, or to levy a tax within constitutional and statutory limitations, as provided by Section 5625-5 of the General Code of Ohio, to pay such judgments.*

2. *No tax levy may be made by a board of education for any purpose*

outside the ten mill limitation, except as the same may be authorized and approved by the electors of the district in accordance with law.

3. *Mandamus* will not lie to compel a board of education to levy taxes outside the ten mill limitation for the purpose of paying a final judgment against the board unless the said levy had first been authorized by a vote of the electors of the district.

4. By virtue of the provisions of House Bill No. 11, of the third special session of the 90th General Assembly, bonds may be issued by a board of education to pay final judgments rendered against the board prior to July 1, 1934, or to pay any other past due obligations of the board existing on said date, if funds are not otherwise available to pay such claims, and it is the duty of boards of education to issue such bonds for the purpose of paying such claims. This duty if not performed by the board may be enforced by an action in *mandamus*. Except as authorized by said House Bill No. 11 a board of education is without power to issue bonds for the payment of a final judgment against the board unless the judgment is based on a non-contractual obligation, and *mandamus* will not lie to compel a board to issue such bonds. A judgment based on the obligation of a board of education to pay foreign tuition as provided by Sections 7735, 7747, 7748, 7750 and 7764, General Code, is not based on a non-contractual obligation within the term as used in Section 2293-3, General Code, authorizing the issuance of bonds for the payment of judgments based on non-contractual obligations.

COLUMBUS, OHIO, October 2, 1934.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Board of Education of Patterson Township School District No. 3, Darke County, Ohio, during the past three years has become indebted to the Board of Education of the Versailles, Ohio, Village School District, which maintains a high school, said indebtedness covering the tuition of pupils sent from the Patterson Township School District No. 3 to the Versailles High School.

Sometime ago a suit was started by the Board of Education of the Village of Versailles against the Patterson Township Board of Education District No. 3, and sought a judgment for the amount due it for tuition of high school pupils.

Thereafter, and about six months ago a judgment was rendered in favor of the Board of Education of the Village of Versailles in the sum of approximately Nine Hundred (\$900.00) Dollars.

Since the bringing of this suit an additional indebtedness has been incurred by the Board of Education of Patterson Township School District No. 3 in favor of the Board of Education of the Village of Versailles for tuition of high school pupils in the sum of approximately Eight Hundred (\$800.00) Dollars, making a total indebtedness of about Seven-teen Hundred (\$1,700.00) Dollars. This indebtedness comprises about three-fourths of the indebtedness of the Patterson Township School District No. 3, and their current tax settlement amounts to approximately Five Hundred (\$500.00) Dollars, which the auditor now has ready for distribution.

The questions on which I wish your opinion are as follows:

First: The proper method of procedure for collection of the judgment, and whether or not any part or all of the current tax settlement ready for distribution can be attached or levied upon by order of the Common Pleas Court or held up in any way by the Board of Education of the Versailles Village School District in the collection of its judgment?

Second: Whether or not it is possible for the Board of Education of Patterson Township School District No. 3 to make an additional levy over and above the ten mill limitation for the purpose of retiring the judgment, without a vote of the electors of the District.

Third: Whether or not a mandamus action will lie to force the Board of Education of Patterson Township School District No. 3 to make the additional levy over and above the ten mill limitation for the purpose of retiring said judgment.

Fourth: Whether or not the proper remedy would be to mandamus the Board of Education of Patterson Township School District No. 3 to require them to issue bonds for the purpose of retiring said judgment.

Fifth: Whether or not said levy or bond issue could be used for the payment of any indebtedness not reduced to judgment."

Before taking up the specific questions contained in your inquiry it is well to note the provisions of House Bill No. 11 enacted as an emergency measure by the 90th General Assembly in its third special session, June 29, 1934. This act is entitled, "An act to limit the borrowing of money by boards of education; to provide for the funding of existing indebtedness; and to declare an emergency."

By the terms of Section 10 of this act, authority is extended to boards of education to negotiate loans for such unfunded current debts of the district, due and unpaid July 1, 1934, as may be included within the meaning of Section 11 of an act passed by the seventy-third Congress of the United States, second session, on May 10, 1934, being an act entitled, "An act relating to direct loans for industrial purposes by federal reserve banks, and for other purposes." Said Section 10 further provides:

"But any unfunded current operating indebtedness due and unpaid on July 1, 1934, and not included within the meaning of section 11 of the act of congress entitled 'an act relating to direct loans for industrial purposes by federal reserve banks, and for other purposes', shall be funded in the manner provided by the separate sections of this act."

Other sections of said House Bill No. 11 authorize and direct boards of education to fund their indebtedness as of July 1, 1934, by the issuance of bonds, and set forth the procedure to be followed in determining the net indebtedness of school districts as of July 1, 1934, and the method of issuing bonds for the funding of said indebtedness.

It appears to have been the intention of the legislature in enacting said House Bill No. 11, to require boards of education to fund all their indebtedness as of July 1, 1934, and it was held by me in Opinion No. 3115, that the provisions of said House Bill No. 11 with respect to the funding of indebtedness by boards of education are mandatory. The syllabus of said Opinion No. 3115 reads as follows.

"Under the provisions of House Bill No. 11 of the third special

session of the 90th General Assembly, it is the mandatory duty of a board of education to submit to the auditor of state an itemized statement of all the outstanding debts of the school district due and unpaid on July 1, 1934, and, upon receipt of the certificate of net floating indebtedness from such auditor, to proceed to issue the bonds of the school district in the total sum thereof less the amount of bonds which prior to the passage of this act may have been issued under the provisions of any act theretofore passed by the 90th General Assembly, which bonds are in excess of the debt limitations which may be incurred, and less the amount of current debts which may be funded by loans made under section 11 of the Act of Congress passed May 10, 1934, entitled "an Act relating to direct loans for industrial purposes by federal reserve banks, and for other purposes."

Where bonds are issued by a board of education by favor of said House Bill No. 11, provision must be made for levying and collecting annually by taxation, an amount sufficient to pay the interest on said bonds and to provide a sinking fund for their final redemption at maturity. (Art. XII, Sec. 2, Constitution of Ohio). The said levy will necessarily be within the ten mill limitation fixed by the Constitution unless a levy outside such limitation is approved for the specific purpose by the electors of the school district in accordance with law. (Art. XII, Sec. 2, Constitution of Ohio, Sec. 5625-2, G. C., and Secs. 5625-15 et seq., G. C.)

I will now take up the questions submitted by you in the order asked:

First: By statute, in Ohio, the property of a school district is not subject to execution or other writ or order in the nature of an execution. Section 4759, General Code, provides:

"Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

In an opinion of this office which will be found in the reported Opinions of the Attorney General for 1927, page 1747, it was held:

"Public funds in the custody of a board of education needed for public purposes are not subject to attachment by judgment creditors."

The statute quoted above, however, does not prevent a court in a proper case from compelling by a writ of mandamus the payment by a school district of certain debts. For instance, in the case of the State ex rel. *The Guardian Trust Company vs. Board of Education of Bay Village School District et al.*, 125 O.S., 644, a writ of mandamus was issued requiring the defendant board of education to apply any moneys in its treasury and any moneys received at its next semi-annual tax settlement applicable thereto, to the payment of a certain note issued by the board in anticipation of current revenues by favor of Section 2293-4 of the General Code of Ohio. The petition in the above case set up the fact that the Bay Village School District had issued its note dated February 6, 1932, in the sum of \$15,000, with interest payable to the Guardian Trust Company in anticipation of current revenues by authority of Section 2293-4, General Code, and that the note or no part of it had been paid. This petition further stated that

the statute in question, from which authority was derived to issue notes in anticipation of current revenues, provided that "the sum so anticipated shall be deemed appropriated for the payment of such note at maturity." The prayer of the petition was as follows:

"Wherefore, relator prays that a writ of mandamus may be issued to the defendants, respectively, commanding the said Board of Education of Bay Village School District and the officers and members thereof, to apply any moneys on hand in the treasury of said defendant board of education applicable thereto to the payment of said note, together with interest thereon, and in the event the moneys now on hand are insufficient for such purpose, to apply any moneys received at the next semi-annual tax settlement to the payment of said note and the interest thereon, and that they be further commanded and required to incur no further indebtedness or obligations in reliance upon the receipts of current revenues until the sum so due this relator with interest has been fully paid, and that they be further commanded and required to cause to be done and performed all other acts required of them by law in the premises to provide money with which to pay said note and the interest thereon. Relator further prays for any other necessary and further relief in the premises against said defendants and each of them and their successors in office to which the relator may be entitled."

On June 1, 1932, the alternative writ of mandamus was issued as prayed for. On June 23, 1932, a peremptory writ of mandamus was issued.

The report of this case in 125 O. S., 644, is very meager and consists entirely of a statement by the court to the effect that defendants were in default for answer or demurrer to the said petition, and having so failed to show cause why they should not comply with the alternative writ of mandamus theretofore issued, the court found the facts stated in the petition to be true and that the plaintiff was entitled to a peremptory writ of mandamus as prayed for. The court order follows:

"It is therefore ordered that a peremptory writ of mandamus issue against the said defendants and each of them for the performance of the acts heretofore alternatively ordered; and that immediately upon the service of this writ they do the acts alternatively ordered."

In my opinion, the above case cannot be taken as authority for stating that a court would go so far as to order a board of education to apply moneys received at an ensuing tax settlement to the payment of a debt of the school district for foreign tuition, or a judgment against the board for such a debt. It is believed that the court was prompted in issuing the writ of mandamus in the above case as it did, by the fact that the statute which authorized the incurring of the debt and the issuance of the note therefore in anticipation of current revenues, expressly provided that when those revenues were received, "the sum so anticipated shall be deemed appropriated for the payment of such notes at maturity."

There are no specific statutory provisions in this state as to the enforcement and payment of judgments against school districts as distinguished from other political subdivisions as there appear to be in some states. (Corpus Juris, Vol. 56, page 802). Provision is made in Sections 5625-3, 5625-4 and 5625-5 of the

General Code, for the levying of a tax for the payment of final judgments against political subdivisions. In Section 5625-3, General Code, authority is extended to the taxing authority of a subdivision to levy taxes for current operating expenses and the acquisition and construction of permanent improvements. Section 5625-4, General Code, provides that one of the separate and distinct levies that may be made by the taxing authority of a subdivision is the "general levy for current expenses." Section 5625-5, General Code, provides that one of the purposes of the general levy for current expenses is for the payment of judgments.

Without a doubt, a board of education could by mandamus be required to provide by a levy for current expenses for the payment of judgments. (Corpus Juris, Vol. 56, page 803.) But the issuance of such a writ is undoubtedly subject to some limitations at least. In the first place the levy which the taxing authority of a subdivision may make for current expenses is limited by the ten mill limitation and by the action of the budget commission in making adjustments of tax levies as required by Section 5625-24, General Code, and made necessary by reason of statutory limitations and the requirements of mandatory levies provided for by Section 5625-23, General Code.

In the case of *Sterling School Furniture Co. vs. Harvey*, 45 Iowa 466, it is held:

"A statute providing that the district meeting at the time of voting a tax for other liabilities shall provide for the payment of orders given on judgments grants no independent power to levy a special judgment tax, and where a judgment is payable out of a specified fund, and the power to tax for the special fund has been exercised to the extent of the statutory limit fixed for that fund, no further tax can be assessed for the payment of the judgment."

There is some force to the contention that the method provided by the legislature for the payment of judgments by the inclusion within the tax levy for current expenses by the taxing authority of a subdivision, is exclusive as to judgments rendered against a subdivision based on obligations other than "non-contractual." As to judgments rendered for non-contractual obligations bonds may be issued (Sec. 2293-3, G. C.) The courts, however, have not held that the method provided by statute for the payment of judgments is exclusive. I do not know that the question has ever been directly raised. At any rate, courts appear to have enforced other methods of collecting judgments. *State ex rel. vs. Bremen*, 117 O. S., 186; *State ex rel. Hagemeyer vs. Village of Pemberville, et al.*, 38 O. App., 162.

While there are no reported cases dealing with the enforcement of judgments against boards of education for foreign tuition and in fact there is a dearth of reported cases in this state on this entire subject, it has come to my attention on several occasions that courts of common pleas have required boards of education by writ of mandamus, to pay such judgments from any unencumbered funds in their treasuries and have required them to appropriate receipts from future tax settlements as they would be received, to the payment of such judgments, and this without any regard whatever to the current needs of the board for operating their schools. No such cases have been officially reported, however, so far as I have found. In the case of *State ex rel. O'Harra vs. Board of Education of Symmes Township*, decided by the Superior Court of Cincinnati in 1877 and reported in 2 Ohio Law Bulletin, page 114, a writ of mandamus was issued to compel the payment of a judgment for the balance of a teacher's salary from any funds in

the possession of the board of education of the district in which the teacher had been employed. No mention was made in the report of this case of the need of these funds for school operating purposes.

This brings us to the question of whether or not a board of education may by mandamus be required to use funds in its treasury for the payment of a judgment rendered against the board or to levy a tax for that purpose to the exclusion of its need of such revenues to operate its school.

Boards of education are required by law to maintain a sufficient number of elementary schools within their respective districts to provide for the free education of the resident youths of the said districts, for a period of not less than thirty-two weeks of each school year. (Section 7644, General Code.)

By the terms of Section 7610-1, General Code, a county board of education is charged with the duty of maintaining the schools in the local district and paying out any school money that should be paid if the local authorities failed to do so. The cost of maintaining the schools and of doing the things that the local board should do, by the county board of education is to be paid from the general fund of the county and charged against the local district, and the county general fund is to be reimbursed at the time of the next tax settlement with the district.

In some jurisdictions at least, a political subdivision will not be required by mandamus to appropriate its property or revenues to the payment of judgments if such revenues or property are necessary to carry out the functions of government with which the subdivision is charged. This rule, as applicable to municipal corporations is stated by McQuillin, in his work on Municipal Corporations, 2nd Ed., Section 2664, as follows:

“While ordinarily mandamus will lie to compel the proper municipal authorities to levy and assess taxes for the payment of a judgment against the city, the extent of this power to tax is limited by the provisions of the Constitution and statutes and only the surplus of the revenues over and above the amount necessary for the operation and conduct of the city government can be applied to this purpose.”

See also Dillon on Municipal Corporations, Section 248, 10 R. C. L., 1222.

The rule stated above does not seem to be applied with strictness by the courts of Ohio. Particularly in the unreported cases referred to above, common pleas courts have in many instances compelled boards of education by writs of mandamus to pay judgments from any funds in their treasuries and to appropriate tax settlements as received to the payment of judgments, in spite of the mandatory duty devolving upon them to maintain their schools. In the case of *State ex rel. Hagemeyer vs. Village of Pemberville, et al.*, 38 O. App., 162, which was an action in mandamus to compel the defendant to take the necessary steps to pay a certain final judgment held by the relatrix against the Village of Pemberville, Wood County, the court said:

“Manifestly, the village of Pemberville should pay this judgment, and that, too, at the earliest possible moment. It will, of course, be very unfortunate if, by so doing, the village is unable to thereafter meet its many necessary requirements. However, be that as it may, lawful obligations such as here in question must be paid, if within the power of the judgment debtor to so do, and that, too, even if other municipal affairs will suffer by reason thereof.

It is insisted, however, that under the law the village of Pemberville is financially unable to pay the judgment at this time. With this contention we do not agree. The method of procedure by which the village can pay this judgment is plainly outlined in the case of *State ex rel. Turner, vs. Village of Bremen*, 117 Ohio St., 186."

The Bremen case referred to in the Pemberville case above, was a case in which a writ of mandamus was issued against the municipal authorities of the Village of Bremen, whereby they were commanded to take the necessary steps as directed by statutes then in force, to pay a judgment against the Village of Bremen either by paying the same from funds in the village treasury "if any there be in the treasury of the said village or available under the statutes for such purpose" or to levy a tax according to law to pay the said judgment or to issue bonds by favor of the then existing Section 2295-8, General Code, the judgment in question having been based on a "non-contractual" obligation.

In the order of the court commanding the alternative of levying a tax to pay the judgment in case there are not sufficient funds in the treasury "available under the statutes for such purpose" no limitation is placed on the amount of tax to be levied so far as the needs of the village for operating purposes are concerned, but in that part of the order of the court commanding the clerk of the village to certify to the village council that funds are not available to pay the judgment as required by the then existing section 5649-1e, General Code, the court circumscribed the certification by saying:

"It is therefore ordered and adjudged that a peremptory writ of mandamus issue, commanding the defendant E. J. Young, clerk of the village of Bremen, if within the limits of its funds available under the statutes for this purpose the village is unable *with due consideration of its best interests* to pay the final judgment in question, to certify that fact to the village council of Bremen." (Italics, the writer's.)

It should be noted that at the time of the decision of the Bremen case, on June 22, 1927, former Section 5649-1c, General Code, was still in force. This statute, in mandatory terms, provided that a tax should be levied to pay judgments. Its repeal and replacement by Section 5625-5, General Code, the provisions of which, with respect to the same matter are not couched in mandatory language, did not become effective until January 1, 1928. It is my opinion, however, that the language of Section 5625-5, General Code, with respect to the inclusion within the general levy of a sufficient amount to pay final judgments, would be construed as being mandatory, at least it seems to have been so regarded in the Pemberville case and in a number of unreported cases involving the paying of judgments by school districts.

In view of these cases, it seems that a board of education may be required by mandamus to pay final judgments against them by appropriating any unencumbered funds in their treasuries available under the statutes for the purpose, or to use future tax settlements to the extent that the funds comprising such settlements may lawfully be used for the purpose of paying judgments or to levy a tax in accordance with Section 5625-5, General Code, for the purpose.

Second: It is manifest from the provisions of Article XII, Section 2 of the Constitution of Ohio, and Section 5625-2, General Code, that tax levies can not be made outside the ten mill limitation by boards of education for any purpose, unless such levies are approved and authorized by a vote of the electors

in the school district where the levy is to be made. The constitutional provision with respect thereto, reads as follows:

“No property taxed according to value shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitations, either when approved by at least a majority of the electors of the taxing district voting on said proposition or where provided for by the charter of a municipal corporation.”

Third: Inasmuch as the taxing authority of a school district does not have power to levy taxes outside the ten mill limitation unless authorized by vote of the electors in the district, mandamus will not lie to compel it to make such a levy.

Fourth: Unless a board of education has the power to issue bonds to pay a judgment rendered against it for foreign tuition, it of course could not be required to do so by a writ of mandamus. That is to say, mandamus will not lie to compel it to issue bonds unless the power exists to issue such bonds. If it has the power to issue such bonds, mandamus will lie to compel it to do so or to take other necessary steps to pay the judgment. *State ex rel. vs. Village of Bremen, supra.*

The only authority to issue bonds of a school district is contained in Sections 2293-2, 2293-3 and 2293-39 to 2293-42, of the General Code of Ohio, and in amended Senate Bill No. 28 of the second special session of the 90th General Assembly and in House Bill No. 11 of the third special session of the 90th General Assembly.

Section 2293-2, General Code, authorizes the issuance of bonds by a political subdivision for the acquisition or construction of any permanent improvement which the subdivision is authorized to acquire or construct.

Section 2293-3, General Code, authorizes the issuance of bonds by a political subdivision to pay judgments based on non-contractual obligations.

Sections 2293-39 to 2293-44, General Code, (115 O. L., 611) authorize the retention of securities given to secure public deposits, in case of default by the depository, and the issuance of bonds by a board of education or the bond issuing authorities of other subdivisions, in anticipation of the ultimate collection or further disposition of such retained securities.

Amended Senate Bill No. 28, of the second special session of the 90th General Assembly, authorizes the issuance of bonds by political subdivisions to enable them to participate in the federal aid provided by the National Recovery Act enacted by the 73rd Congress of the United States.

House Bill No. 11, of the third special session of the 90th General Assembly authorizes the issuance of bonds by boards of education for the purpose of funding their indebtedness as of July 1, 1934. The provisions of this act have been discussed earlier in this opinion.

In my opinion a judgment against a school district for foreign tuition is not a judgment based on a non-contractual obligation, so as to permit the board to issue bonds to pay the judgment by authority of Section 2293-3, General Code. The obligation to pay foreign tuition is contractual in its nature. While it is not the outgrowth of an express contract unless incurred by favor of Section 7750, General Code, a contractual obligation is implied, and it arises by virtue of the provisions of Sections 7747, 7748 and 7764, General Code, which provide that such tuition must be paid under certain circumstances. The law makes the contract and fixes the obligation in such a manner that it cannot be said to

be non-contractual in its nature within the meaning of the term as used in Section 2293-3, G. C.

I am not advised whether or not circumstances are such in the Patterson Township School District that bonds might be issued by authority of Amended Senate Bill No. 28 of the second special session of the 90th General Assembly. If, in fact, circumstances are such in this district that bonds might be issued by authority of the act mentioned, mandamus will lie to compel the board to do so.

The board may be compelled to issue bonds in pursuance of House Bill No. 11 of the third special session of the 90th General Assembly, not only to pay the judgment in question but to pay any other indebtedness of the district existing on July 1, 1934.

Fifth: Tax levies may be made to pay any indebtedness of a school district whether reduced to judgment or not if they can be made within constitutional and statutory limitations. Bonds cannot be issued under any circumstances for the express purpose of paying past due obligations unless they be for the payment of judgments based on non-contractual obligations, except such bonds as may be issued by authority of House Bill No. 11 of the third special session of the 90th General Assembly.

In specific answer to your questions I am of the opinion:

1. Real or personal property vested in a board of education for school purposes may not be levied upon or attached by judgment creditors nor may funds distributable to a board of education by way of tax settlements be so levied upon or attached. Mandamus will lie to compel a board of education to appropriate funds in its possession and available for the purpose, to the payment of final judgments rendered against the board, or to levy a tax within constitutional and statutory limitations, as provided by Section 6525-5 of the General Code of Ohio, to pay such judgments.

2. No tax levy may be made by a board of education for any purpose outside the ten mill limitation, except as the same may be authorized and approved by the electors of the district in accordance with law.

3. Mandamus will not lie to compel a board of education to levy taxes outside the ten mill limitation for the purpose of paying a final judgment against the board, unless the said levy had first been authorized by a vote of the electors of the district.

4. By virtue of the provisions of House Bill No. 11, of the third special session of the 90th General Assembly, bonds may be issued by a board of education to pay final judgments rendered against the board prior to July 1, 1934, or to pay any other past due obligations of the board existing on said date, if funds are not otherwise available to pay such claims, and it is the duty of boards of education to issue such bonds for the purpose of paying such claims. This duty if not performed by the board may be enforced by an action in mandamus. Except as authorized by said House Bill No. 11, a board of education is without power to issue bonds for the payment of a final judgment against the board unless the judgment is based on a non-contractual obligation, and mandamus will not lie to compel a board to issue such bonds. A judgment based on the obligation of a board of education to pay foreign tuition as provided by Sections 7735, 7747, 7748, 7750 and 7764, General Code, is not based on a non-contractual obligation within the terms as used in Section 2293-3, General Code, authorizing the issuance of bonds for the payment of judgments based on non-contractual obligations.

5. In view of the answers to the first four questions the fifth question does not call for an answer.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3267.

APPROVAL, REGULARITY OF PROCEEDINGS TO CONVERT THE WEST SIDE BUILDING AND LOAN ASSOCIATION OF HAMILTON, OHIO, INTO THE WEST SIDE FEDERAL SAVINGS AND LOAN ASSOCIATION OF HAMILTON, OHIO, UNDER SECTION 9660-2, GENERAL CODE.

COLUMBUS, OHIO, OCTOBER 2, 1934.

HON. PAUL A. WARNER, *Superintendent of Building and Loan Association, Columbus, Ohio.*

DEAR SIR:—I have examined the papers recently submitted by you in connection with the conversion of The West Side Building and Loan Association of Hamilton, Ohio, into the West Side Federal Savings and Loan Association of Hamilton, and find the papers submitted and the proceedings of said association, as disclosed thereby, to be regular and in conformity with the provisions of Section 9660-2 of the General Code of Ohio.

The papers are returned herewith, to be filed by you as a part of the permanent records of your department.

The law provides that when the requirements of said Section 9660-2 have been complied with by the association, you shall, within ten days thereafter, cause one copy of the Federal Savings and Loan Association Charter, with your approval endorsed thereon, to be filed with the Secretary of State, and transmit to the secretary the sum of \$5.00 paid to you by the association.

I have drawn a form of approval for your signature, endorsed on the copies of the charter.

For your information I quote from the law as to the effect on the status of the old association of the filing with the Secretary of State of a copy of the charter:

“Sec. 9660-2. * * * on the day and hour of such filing, such association shall be deemed to have been converted into the federal savings and loan association evidenced by such charter, and thereupon:

(1) The corporate powers of the association under the laws of this state shall cease to exist and its constitution and by-laws shall cease to be in force.

(2) Its articles of incorporation shall be deemed to have been cancelled and annulled.

* * * * *

(4) The power and authority of the superintendent of building and loan associations over and with respect to such association, its property and assets, shall terminate.”

Respectfully,
 JOHN W. BRICKER,
Attorney General.