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EDUCATION; BONDS—PROCEEDINGS, §133.09 *et seq.* R. C. OR §133.18 R. C.—PROPOSED ISSUANCE—NOVEMBER ELECTION.

SYLLABUS:

Where a school district proposes to issue bonds and to levy a tax outside the ten-mill limitation to pay the interest thereon and to retire such bonds, and where the question thus involved is to be submitted to the electors in a November election, such district may proceed either under Section 133.09 *et seq.*, Revised Code, or under Section 133.18, Revised Code.

Columbus, Ohio, Oct. 31, 1958

Hon. James H. Estill, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Education of the Big Prairie-Lakeville Local School District, Holmes County, Ohio, by a majority vote of its members in regular meeting assembled proposed the question of the issuing of bonds for school construction and improvement for election on November 4th. The resolution declaring the necessity was passed under the authority of Section 133.09 R. C.

“A question has been raised by two members of the board and several taxpayers within the district as to whether or not this action was proper in view of Section 133.18 R. C. which seemingly applies specifically to the submission of the question of issuing bonds for permanent improvements in school districts.

“Thus your opinion is requested on the following question: Can a Board of Education proceed to submit such a question by a majority vote under Section 133.09 R. C. in view of the specific provisions of Section 133.18 R. C.?”

A reference to the history of Section 133.18, Revised Code, discloses that it was originally enacted in 1949 as Section 2293-15c, General Code. See 123 Ohio Laws, 72.

Prior to this enactment the question of school bond issues was of necessity submitted as provided in former Section 2293-19 *et seq.*, General Code, now codified as Section 133.09 *et seq.*, Revised Code. One of the

requirements as to the submission of such bond issues to the electors, found in former Section 2293-22, General Code, was that this must be done only at a November election. Another requirement, found in former Section 2293-23, General Code, was the necessity of a favorable vote of fifty-five per cent, with certain exceptions, of those voting on the proposition. The "November election" requirement, as to issues submitted as provided in Section 133.09 *et seq.*, Revised Code, is currently to be found in Section 133.12, Revised Code.

In the 1949 enactment, school districts were authorized to initiate bond issue proceedings "at any time", and to submit such questions to the electors at general, primary and special elections, in the latter case the date of the election being specified in the resolution of necessity. This same authorization is currently found in Section 133.18, Revised Code.

Moreover, in former Section 2293-15c, General Code, it was provided that if the matter were submitted at a general election a fifty-five per cent favorable vote was required, but at a special or primary election a sixty per cent vote was required. This same requirement is currently found in Section 133.18, Revised Code.

It is thus plain that Section 2293-15c, General Code, at the time of its enactment, was not to be regarded as providing the sole method of proceeding where a school district proposes to authorize a voted bond issue, but rather that such section supplemented Section 2293-19, General Code, by making special provision for the special situations therein described. Here it is to be observed that in Amended Senate Bill No. 242, (125 Ohio Laws, 716), both of these sections were amended, following the re-codification of 1953, to provide in each case that the resolution of necessity should be certified to the county auditor at least one hundred ten days prior to the election; and in this respect one of the points of difference between the two statutes was removed. It is to be noted, however, that this was done in a statute designed to revise the *election* laws to provide uniformity with respect to the filing with the board of elections of various matters other than both issue resolutions. The title of this act reads in pertinent part:

"* * * to establish a uniform date for filing tax levies, bond issues and miscellaneous issues with the board of elections and to correct technical errors and inconsistencies in the election laws in order to provide for a more uniform operation of these laws throughout the state."

It would appear that this act, therefore, was designed to provide uniformity for the convenience of the election authorities and I am unable to find in it any indication of a legislative intent to disturb the previously existing relation between these two sections, *i. e.* that of the later enacted Section 133.18, Revised Code. Specifically, I find no evidence of an intent to make Section 133.18, Revised Code, the sole authority under which a school district can proceed in the matter here involved. Accordingly, I conclude that where a school district proposes to issue bonds and to levy a tax outside the ten-mill limitation to pay the interest thereon and to retire such bonds, and where the question thus involved is to be submitted to the electors in a November election, such district may proceed either under Section 133.09, *et seq.*, Revised Code, or under Section 133.18, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General