

A board of county commissioners is without authority to appropriate public funds in order to contribute to the expense of dredging a river as an aid to navigation in such river. Your question must, therefore, be answered in the negative.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2158.

CUSTODIANS PENSION FUND—DUTY OF BOARD OF EDUCATION TO APPROPRIATE THEREFOR.

SYLLABUS:

Where a board of education has established a Custodians' Pension Fund, it is required to appropriate for the uses of such fund a sum equal to not less than one-tenth, nor more than one-fifth of one per cent of the amount levied and collected by said board for all purposes. This does not include levies made under authority of a vote of the people, but does include levies for interest and retirement charges of funds issued by such board without a vote of the people.

COLUMBUS, OHIO, May 24, 1928.

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

GENTLEMEN:—This is to acknowledge your recent communication which reads as follows:

“You are respectfully requested to render this department your written opinion upon the following, certain additional questions having arisen, growing out of the opinion rendered by you to this department under date of March 9, 1928, and being Opinion No. 1829, relative to the assessment of custodians' pension funds. The additional questions appear to be as follows:

Question 1: When a board of education has issued bonds without a vote of the people are the funds levied for the payment of the interest and the retirement of such bonds, subject to the assessment for custodians' pension funds, as provided in Section 7882 of the General Code?

Question 2: When an additional levy of three mills has been voted by the people of the district, are the proceeds of such levy subject to an assessment for the custodians' pension funds?

Question 3: When an additional levy is made for recreational purposes by vote of the people, are the proceeds of such levy subject to assessment for the custodians' pension fund?

We are enclosing herewith a copy of a letter, addressed to the Director of Law, by the clerk of the Board of Education of the Lakewood City School District, in connection with the questions submitted.”

The letter which you enclosed contains the following:

“On page 8 of the opinion appears the following:

‘It seems to me that the language, levied and collected by said School Board for all purposes, refers only to the levies authorized by law to be made

under ordinary circumstances by the *School Board* for school purposes, and not to those levies which can only be made by a vote of the people.'

In addition to the bond retirement levies made by vote of the people, the Board of Education is enjoying a 3 mill levy outside of the 15 mill limitation, by authorization of a vote of the people and a 1/10 mill levy for recreation purposes authorized by vote of the people. It would seem to be under this opinion that we would not have to pay our percentage into the Custodians' Pension Fund of the proceeds of these levies.

In past years the Board also has issued bonds without a vote of the people as it still has the right to do. I am unable to determine from the reading of the opinion whether or not the Attorney General holds that the proceeds of the levies necessary to carry these bonds would be exempt from the percentage contribution to the Custodians' Pension Fund. He specifically exempts the voted levies but the language of the bonds without a vote of the people leads me to the conclusion that the levy necessary to carry these bonds ought to be as sacred as the voted bonds."

The previous opinion referred to dealt with the amount to be appropriated by a board of education to a Custodian's Pension Fund theretofore established.

The language used in the prior opinion No. 1829, dated March 9, 1928, and quoted in the letter of the clerk of the board is dispositive of your second and third questions. The distinction made in that opinion between levies made by the board ordinarily and those which it makes only after direct authority of a vote of the people is applicable to any kind of levy whether bonds are issued pursuant to such levy or not. The distinction lies in the fact that, when the Legislature used the language "amount levied and collected by said school board for all purposes" in Section 7882 of the General Code, it probably had reference only to those levies made directly by the board and not requiring specific authority of a vote of the people.

In your first question, however, you inquire as to levies for the purpose of retiring bonds issued by a board of education without a vote of the people. In this instance the levy is made directly by the board without any necessity of the approval of the voters. This being true, I am of the opinion that a board of education in a city school district where a custodians' pension fund has been established, is required to cause to be paid to such fund a sum equal to not less than one-tenth, nor more than one-fifth of one per cent of the amount levied for interest and bond retirement purposes of bonds issued without a vote of the people.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2159.

**CIGARETTES—FOREIGN CORPORATION SELLING TO RETAIL DEALERS
IN OHIO—LIABILITY FOR TAX—LIABILITY OF JOBBER—WHOLE-
SALE AND RETAIL LICENSE DISCUSSED.**

SYLLABUS:

1. *A corporation located outside the state through its salesmen sells cigarettes to retail dealers in Ohio and ships the same direct. The retail dealers receive no invoices from the corporation, which sends the invoices to an Ohio representative who presents the invoices to the retailers, makes collection and settles with the corporation, deriving a profit from the transactions. Such transactions are in legal effect sales by the corporation direct*