

tutions would not be liable for indebtedness created by John Carroll University, as it appears that each institution is to maintain a separate existence, for administrative purposes.

You also state in your inquiry, "If you see any other legal complications under the proposed affiliations, will you please render full opinion upon all matters involved?"

Each of the institutions mentioned is a private institution. Each institution, no doubt has some endowments. Whether or not the endowments of Ursuline College and Notre Dame College, if any, might be affected by the surrender of exclusive and independent control over their respective faculties is a question upon which I could not, and perhaps should not pass, at least not without a complete and detailed knowledge of the terms of those endowments. In any event, any such questions would not affect the right of John Carroll University to confer degrees and honors on students attending Notre Dame College and Ursuline College in the event a proper working arrangement is made between these institutions as above stated.

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

1. If a plan of affiliation is effected between John Carroll University on the one hand and Notre Dame College and Ursuline College whereby each institution maintains its separate and corporate existence for administrative purposes, but the courses of study in each of the colleges and the duty of organizing and fostering those courses of study and the student body and faculty of each college, and in fact the entire college in so far as its academic aims and purposes are concerned are placed under the direct and sole jurisdiction and supervision of the university, the trustees of the university may lawfully confer degrees and honors on the students of each of said institutions upon the recommendation of the faculty of each institution, providing the Superintendent of Public Instruction issues his proper certificate to the university and the same is filed with the Secretary of State in accordance with Section 9923, General Code.

Your second and third questions may be answered together.

Under a plan of affiliation between two or more institutions of learning, whereby each institution maintains its separate existence for administrative purposes and affiliates only in the prosecution of its academic aims and purposes, neither institution by force of the arrangement becomes liable for the indebtedness of the other.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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760.

BOARD OF EDUCATION—AUTHORIZED TO TRANSFER FUNDS FROM  
GENERAL FUND OF SUBDIVISION TO SINKING FUND OR BOND  
RETIREMENT FUND TO MEET DEFICIENCY.

*SYLLABUS:*

*Moneys may be transferred from the general fund of a subdivision to the*

*sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds.*

COLUMBUS, OHIO, May 3, 1933.

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

GENTLEMEN:—Your letter of recent date is as follows:

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

The board of education of the Akron City School District transferred \$100,000 from its general fund to its bond retirement fund. Sometime after this transfer, an attempt was made to make a further transfer of a greater amount from the general fund to the bond retirement fund, and the transfer was stopped by an injunction proceeding in the Common Pleas Court. This was case no. 93797, Summit County. The Court of Common Pleas enjoined the board from making such transfer, and the case was then carried to the Court of Appeals. We are enclosing herewith a copy of the journal entry in the Court of Appeals.

The transfer first above referred to was made under authority of section 5625-13, paragraph (e) of the General Code.

QUESTION: Was this transfer legally made; and if not legally made, would the board of education at this time be authorized to re-transfer this amount from the bond retirement fund to the general fund of the district?”

In your letter you mention two transfers of money from the general fund to the bond retirement fund, both, I assume, to meet a deficiency in the bond retirement fund. The first transfer was consummated. The second was sought to be stopped by an action in injunction. The board was enjoined by the Common Pleas Court—case appealed to the Court of Appeals and the petition of plaintiff dismissed by the Court of Appeals. Your inquiry is with respect to the first transfer—you ask if this transfer made under authority of paragraph (e) of Section 5625-13, General Code, was legally made. The authority for such transfer is contained in this section in the following language:

“No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:

\* \* \* \* \*

c. Moneys may be transferred from the general fund to the sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds.

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I am advised that this inquiry is predicated upon a question as to the effect of the litigation seeking to enjoin the second transfer. In this action, being the case of *Portage Land Park Co. vs. Board of Education of Akron City School Dist., et al.*, No. 93797 of the Court of Common Pleas of Summit County, on April 12, 1932, the court enjoined the board of education from transferring moneys from the general fund to the bond retirement fund. The case, however,

was heard on appeal by the Court of Appeals of Summit County, which court refused the injunction, finding for the defendants, the Board of Education. The copy of the journal entry of the Court of Appeals which you have submitted reads as follows:

“This day this cause came on to be heard upon the pleadings, evidence and argument of counsel, and was submitted to the court;

Upon consideration whereof, the court finds, on the issues joined, in favor of defendants.

It is therefore ordered, adjudged and decreed that the petition of the plaintiff be dismissed, at its costs.

To all of which the plaintiff excepts.”

There is no question but that the action of the Court of Appeals constitutes a reversal of the decision of the Common Pleas Court. This case then is surely no authority for a conclusion to the effect that such a transfer may not be made. Paragraph e of Section 5625-13, *supra*, authorizes such a transfer in clear and unambiguous language. It is therefore my opinion that the transfer about which you inquire was legal. Having reached this conclusion, it is unnecessary to answer your second question.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

761.

COUNTY HIGHWAYS — BRIDGES — MONEY EXISTING IN SPECIAL FUND THEREFOR MAY NOT BE TRANSFERRED TO BOND RETIREMENT FUND WHEN—COUNTY COMMISSIONERS CANNOT SET ASIDE SPECIAL ASSESSMENT WHEN.

*SYLLABUS:*

1. *Where there exists a special fund, created pursuant to the provisions of section 5625-9, General Code, for the purposes of general construction, reconstruction, resurfacing and repair of county highways and bridges, any funds remaining therein may not be transferred to the bond retirement fund of such subdivision so long as there remain highways or bridges in such county which may be in need of such repair.*

2. *In the absence of illegality in the levy of a special assessment, in anticipation of the receipt of which bonds have been issued, the board of county commissioners has no authority to cancel or set aside such assessments.*

COLUMBUS, OHIO, May 3, 1933.

HON. L. ASHLEY PELTON, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which reads as follows:

“I hereby request your official opinion upon the question which is involved in this letter. The question is as follows: