

2972.

APPROVAL, BONDS OF CLARK COUNTY, OHIO—\$28,250.00.

COLUMBUS, OHIO, February 21, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2973.

APPROVAL, BONDS OF FAIRPORT VILLAGE SCHOOL DISTRICT,
LAKE COUNTY, OHIO—\$4,500.00.

COLUMBUS, OHIO, February 21, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2974.

APPROVAL, BONDS OF SALT CREEK TOWNSHIP RURAL SCHOOL
DISTRICT, MUSKINGUM COUNTY, OHIO—\$30,000.00.

COLUMBUS, OHIO, February 21, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2975.

BUILDING STANDARDS—PROCEDURE WHEN MODIFIED RULE OF
EQUIVALENCY DIFFERS MATERIALLY FROM ORIGINAL RULE—
PUBLIC HEARINGS—WHEN REQUIRED TO READVERTISE.*SYLLABUS:*

1. *Rule 15, as modified and adopted by the Ohio Board of Building Standards, is different in material respects in comparison with the duly advertised original rule of equivalency, and the provisions of Section 12600-290, General Code, are applicable to rule 15.*

2. *An amendment or an annulment is accomplished even though it merely reduces the scope of a duly advertised rule of equivalency when the modified rule of equivalency differs in a material respect from that of the original rule of equivalency.*

3. *Where the Ohio Board of Building Standards advertises a rule of equivalency, which is subsequently changed in material respects following public hearings held in pursuance with the published notice, the rule of equivalency, as modified by said board, must be re-advertised in accordance with the provisions of section 12600-290, General Code. The modified rule of equivalency can not be adopted by the Ohio Board of Building Standards until after a public hearing is had, as provided for in the re-advertised notice, and must then be filed in the office of the Secretary of State before becoming effective.*

COLUMBUS, OHIO, February 21, 1931.

HON. THOMAS C. DEVINE, *Secretary, Ohio Board of Building Standards, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads as follows:

“The Ohio Board of Building Standards duly advertised according to Section 12600-290, G. C., the following rule of equivalency:

‘The method of ventilation which discharges the vitiated air from school rooms, except chemical laboratories, chemical lecture rooms, cooking rooms, shops and toilet rooms, into the corridor by means of openings with suitable louvres or offsets in the proportion of one (1) square inch to each five (5) cubic feet of air introduced into the room per minute and thence from the corridor thru toilet rooms or directly to the outside, is hereby declared to be the equivalent as regards safety and sanitation of the requirements of Section 12600-64 G. C.’

The Public Hearing was held on said date and also adjournment dates so that at four meetings of the Board the public was heard. As a result, the proposed rule was modified to meet suggestions raised in the hearing.

The Rule as modified, adopted, and filed with the Secretary of State is per enclosed copy.

In accordance with Section 12600-291 G. C., a petition for a rehearing has been presented to the Board in which it is claimed the Board should re-advertise the rule in its modified form before its final passage.

The Board requests your opinion as to the legality of its action, whether the rule with the changes made, *reducing* the scope of the advertised rule, would require to be re-advertised as any new rule. It was felt that all the purposes of the Public Hearing had been met. If the rule had been broadened in its scope the Board would have no question to raise and would re-advertise.”

The modified rule duly adopted by your board in place of the duly advertised rule of equivalency, is as follows:

“The method of ventilation which discharges the air from school rooms of fire-proof structures (except chemical laboratories, chemical lecture rooms, cooking rooms, shops and toilet rooms) at or near the floor of the room and thence into the corridor not less than seven (7) feet

above the floor by means of openings with suitable controlled louvres and offset ducts and/or flues of the proper size to remove the required quantity of air introduced into the room per minute, and thence from the corridor thru toilet rooms and thru ducts and/or flues, or directly, to the outside, is hereby declared to be the equivalent as regards safety and sanitation of the requirements of that portion of Section 12600-64 G. C. which reads as follows: 'The vitiated air shall be conducted thru flues or ducts to and be discharged above the roof of the building.'

I shall refer herein to the original and duly advertised rule of equivalency, as the original rule, and the rule as modified and duly adopted by your board, as rule 15.

Section 12600-290, General Code, in so far as pertinent to your inquiry, is as follows:

"If the board, after hearing, shall deem it advisable to adopt the rule or regulation or amendment or annulment thereof petitioned for, it shall give at least thirty days' notice of the time and place of a public hearing thereon, which notice shall state in full the proposed rule or regulation to be adopted, amended or annulled, or the proposed amendment, and shall be advertised in at least five newspapers published in different counties and of general circulation in the state. No such rule or regulation shall be adopted, amended or annulled until after such public hearing."

Section 12600-290, General Code, was construed by my predecessor in an opinion which may be found in the Opinions of the Attorney General, 1924, at page 235. The second paragraph of the syllabus is as follows:

"Such board after publication of a notice of a proposed rule under the provisions of Section 12600-290, after the hearing may not legally adopt any rule *differing in any material respect* from the proposed rule or regulation as published." (Italics the writer's.)

At page 237 of the opinion the following was stated in reference to section 12600-290, General Code:

"From the foregoing it will be observed that before your board has authority to pass upon a given petition, the question of adoption, amendment or annulment of a rule or regulation, that notice required by law is mandatory. The purpose is that the public shall have full information of the nature of the proposed rule or regulation, and that the same shall be stated in full.

From this it follows that any material change in such a notice after publication would be in violation of this law. There could be no useful purpose served in requiring such a notice if after the hearing your board could adopt a rule or regulation which is unlike the published regulation. Of course, it is possible that minor corrections could be made which would in no wise change the character or nature of the rule. However, if such proposed alteration or change is of an immaterial nature, the question will suggest itself as to the necessity for any such change. In any event, any material change in the rule could not legally be made after publication of the same."

It is therefore apparent that any material change in any rule of equivalency can not be made unless there is compliance with the provisions of section 12600-290.

The question involved in your inquiry is whether or not rule 15, as adopted by your board, is altered or changed in a material respect so as to come within the provisions of section 12600-290, General Code.

Section 12600-1, General Code, classifies buildings into two general groups as follows:

1. Theaters and assembly halls.
2. School buildings.

Section 12600-44, General Code, classifies school buildings into Grade A and B, and such code section reads as follows:

"Under the classification of school buildings are included all public, parochial and private schools, colleges, academies, seminaries, libraries, museums and art galleries, including all buildings or structures containing one or more rooms used for the assembling of persons for the purpose of acquiring knowledge, or for mental training.

Grade A. Under this grade are included all rooms or buildings appropriated to the use of primary, grammar or high schools, including all rooms or buildings used for school purposes by pupils or students eighteen (18) years old or less.

Grade B. Under this grade are included all rooms or buildings appropriated to the use of schools, colleges, academies, seminaries, libraries, museums, and art galleries; including all rooms or buildings not included under grade 'A'."

Section 12600-45, General Code, provides as follows:

"Grade A. Where the main first floor line is eight (8) feet or more above the grade line at any entrance to or exit from any story above the basement, the basement shall be rated as the first story. Stories over fifteen (15) feet high, measuring from the floor to the ceiling line shall be rated as two stories. All buildings more than two stories high shall be of fireproof construction.

All buildings two stories high and less shall be of fireproof or composite construction.

No school building of grade A shall be built more than three (3) stories high.

Grade B. Where any floor level is more than twenty-six (26) feet above the grade line at any entrance to or exit from the building, the building shall be of fireproof construction.

Where the floor levels are less than twenty-six (26) feet above the grade line at any entrance to or exit from the building, the building shall be of composite or fireproof construction."

The original rule provided for a method of ventilation discharging vitiated air from school rooms, while rule 15 provides for a method of ventilation discharging air from school rooms of fireproof structures. In other words, the original rule applied to school rooms of buildings either of fireproof or composite construction. Rule 15, in its application, is limited solely to school rooms of fireproof construction. School rooms of fireproof construction are controlled by section 12600-45, General Code, *supra*. The use of the words "fireproof

structures" in rule 15 is, in my opinion, a material change since the rule of equivalency prescribed by rule 15 can apply only to certain school buildings, whereas the original rule of equivalency applied to all school buildings, regardless of whether the building or buildings were of fireproof or composite construction. The original rule provided for a method of ventilation for vitiated air from school rooms into the corridors "by means of openings with suitable louvres or offsets in the proportion of one (1) square inch to each five (5) cubic feet of air introduced into the room per minute," which was to be equivalent to the following provision in section 12600-64, General Code, which is as follows: "The vitiated air shall be conducted thru flues or ducts." Rule 15 provides that the method of ventilation of air may be "by means of openings with suitable *controlled* louvres and offset ducts and/or flues of the proper size to remove the required quantity of air introduced into the room per minute." Rule 15 requires suitable and controlled louvres and offset ducts with the option of using flues instead of offset ducts or with the option of using both offset ducts and flues, whereas the original rule merely requires suitable louvres or offsets. Thus the means to be used in conducting the air out of the school rooms into the corridors is enlarged by rule 15 and, in my mind, the change is one which differs materially from that of the original rule.

To conduct the air from the corridors to the outside of the building, the original rule provides that it may be through the toilet rooms or directly outside, instead of being discharged above the roof of the building as provided for in section 12600-64, General Code. Rule 15, in this particular respect, provides that the air is to be discharged "from the corridor through toilet rooms and through ducts and/or flues, or directly, to the outside." Thus rule 15, in the matter of conducting the air out of the building from the corridor, provides, in addition to the means prescribed in the rule, the right of using ducts or flues or both. This additional method is a change in a material matter.

Rule 15 also provides for a different place of making the openings for the louvres, ducts or flues than does the original rule. The original rule, as altered by rule 15, does not retain its identity. Rule 15 is in fact a new rule since it imposes new conditions and new limitations and creates new options or privileges different than those in the original rule.

It is therefore my opinion that:

1. Rule 15, as modified and adopted by the Ohio Board of Building Standards, is different in material respects in comparison with the duly advertised original rule of equivalency, and the provisions of section 12600-290, General Code, are applicable to rule 15.

2. An amendment or an annulment is accomplished even though it merely reduces the scope of a duly advertised rule of equivalency when the modified rule of equivalency differs in a material respect from that of the original rule of equivalency.

3. Where the Ohio Board of Building Standards advertises a rule of equivalency, which is subsequently changed in material respects following public hearings held in pursuance with the published notice, the rule of equivalency, as modified by said board, must be re-advertised in accordance with the provisions of section 12600-290, General Code. The modified rule of equivalency can not be adopted by the Ohio Board of Building Standards until after a public hearing is had, as provided for in the re-advertised notice, and must then be filed in the office of the Secretary of State before becoming effective.

Respectfully,

GILBERT BETTMAN,
Attorney General.