

2336.

COURT HOUSE—JAIL—COUNTY INFIRMARY—COUNTY COMMISSIONERS AUTHORIZED TO BORROW MONEY AND ISSUE BONDS FOR REPAIR OF SAID BUILDINGS—CERTAIN STATUTORY LIMITATIONS.

*Under the provisions of section 2434 G. C., county commissioners are authorized to borrow money and issue bonds for the payment thereof for the purpose of repairing a court house, county jail or county infirmary, such bond issue, however, being subject to the limitations of sections 5638 and 5649-2 et seq. of the General Code.*

COLUMBUS, OHIO, August 12, 1921.

HON. KARL TIMMERMEISTER, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent letter, requesting the opinion of this department, as follows:

“Our court house is badly in need of repair, including redecoration. Both the jail and the county infirmary are in need of repair. The different funds for the repair of buildings are depleted. Have the commissioners authority under sections 2433 and 2434 G. C. to borrow money by issuing bonds for the above purpose?”

Relative to your inquiry, sections 2433 and 2434 of the General Code provide as follows:

“Sec. 2433. When, in their opinion, it is necessary, the commissioners may purchase a site for a court house, or jail, or land for an infirmary or a detention home, public market place, or market house, or additional land for an infirmary or county children’s home at such price and upon such terms of payment, as are agreed upon between them and the owner or owners of the property. The title to such real estate shall be conveyed in fee simple to the county.”

“Sec. 2434. For the execution of the objects stated in the preceding section, or for the purpose of erecting or acquiring a building in memory of Ohio soldiers, or for a court house, county offices, jail, county infirmary, detention home, public market house, or additional land, for an infirmary or county children’s home or other necessary buildings or bridges, or for the purpose of enlarging, repairing, improving, or rebuilding thereof, or for the relief or support of the poor, the commissioners may borrow such sum or sums of money as they deem necessary, at a rate of interest not to exceed six per cent per annum, and issue the bonds of the county to secure the payment of principal and interest thereof.

Provided, that if the judge désignated to transact the business arising under the jurisdiction provided for in section 1639 of the General Code of the state of Ohio, shall advise and recommend in writing to the county commissioners of any county the purchase of land for and the erection of a place to be known as a detention home, or additional land for an infirmary or county children’s home, the commissioners without first submitting the question to the vote of the county may levy a tax for either or both of such purposes in an amount not to exceed in any one year two-tenths of one mill for every dollar of taxable property on the tax duplicate of said county.”

A consideration of the sections cited would seemingly indicate that county buildings erected or acquired under the provisions of said sections were definitely intended to be included in that class of buildings to which the phrase "or for the purpose of enlarging, repairing, improving or rebuilding thereof" applies. It is not so clearly indicated on the other hand, that the county buildings already acquired and serving similar purposes were likewise intended to be included within the meaning of said phrase, although it is clearly apparent that such buildings are not specifically excluded.

It is believed, however, that the legislative intent, as expressed by the provisions of section 2434 G. C., is to authorize generally the enlarging, repairing, improving and rebuilding of the county buildings mentioned in said section, and it is thought to be reasonably concluded, therefore, that the county buildings already acquired and erected would come within the meaning of said section, as well as those distinctly acquired by its provisions.

It would seem, then, that the three phrases used in section 2434 G. C. and pertinent to the question under consideration, when combined would read as follows: "or for the purpose of enlarging, repairing, improving or rebuilding a court house, county offices, jail, county infirmary, detention home, public market house \* \* \* the commissioners may borrow such sum or sums of money as they deem necessary, at a rate of interest not to exceed six per cent per annum, and issue the bonds of the county to secure the payment of the principal and interest thereof."

Since the repairing of the county buildings mentioned in your communication, namely the court house, county jail and county infirmary, would clearly fall within the provisions of section 2434 G. C., it would seem that a bond issue for the purpose of meeting such an expense is fairly authorized by the provisions of this section.

While your communication does not state the amount of the expenditure contemplated, or whether the bond issue is to cover separately or collectively the purposes indicated, your attention is nevertheless called to the provisions of section 5638 G. C., limiting the tax levy in such cases to a sum not in excess of ten thousand dollars without a submission of the question to the electors; also sections 5649-2 G. C. et seq., limiting the aggregate tax levy to ten mills in one year on each dollar of the tax valuation of the county.

In specific answer therefore to the inquiry submitted, it is the opinion of this department that under the provisions of section 2434 G. C. the county commissioners are authorized to borrow money and issue bonds in payment therefor for the purposes indicated in your inquiry, such bond issue, however, being subject to the limitations of sections 5638 and 5649-2 et seq. of the General Code.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*