

84.

SPECIAL ELECTION—NO AUTHORITY TO SUBMIT BOND ISSUE TO  
CONSTRUCT SCHOOL BUILDING TO REPLACE ONE CONDEMNED  
BY DEPARTMENT OF INDUSTRIAL RELATIONS.

SYLLABUS:

*There is no authority to submit, at a special election, the question of a bond issue to construct a school building to replace one condemned by the Department of Industrial Relations.*

COLUMBUS, OHIO, February 16, 1927.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

“Will you kindly advise whether or not a special election for the issuance of bonds (emergency bonds, Sec. 7630-1, G. C.) may be held under the following conditions:

The school building in Centerville village school district has been condemned by the state building inspector and the board of education ordered not to hold school therein after the present school year.

Section 5649-9d, G. C., seems to limit special elections to cases where ‘it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty.’

To delay the vote until the regular November election will make it too late to erect the building for use next year.”

Section 7630-1 of the General Code, provides, in part, as follows:

“If a school house is wholly or partly destroyed by fire or other casualty, or if the use of any school house for its intended purpose is prohibited by any order of the department of industrial relations, and the board of education of the school district is without sufficient funds applicable to the purpose, with which to rebuild or repair such school house or to construct a new school house for the proper accommodation of the schools of the district, and it is not practicable to secure such funds under any of the six preceding sections because of the limits of taxation applicable to such school district, such board of education may, subject to the provisions of Sections seventy-six hundred and twenty-six and seventy-six hundred and twenty-seven, and upon the approval of the electors in the manner provided by Sections seventy-six hundred and twenty-five and seventy-six hundred and twenty-six issue bonds for the amount required for such purpose. Such bond issue may be voted upon at a general election or if the bonds are issued for the purpose of rebuilding or repairing a school house wholly or partly destroyed by fire or other casualty, or for the purpose of building a new school house for the proper accommodation of schools of the district in lieu of repairing or rebuilding such school house destroyed by fire or other casualty, at a general election or at a special election called for that purpose. \* \* \*”

Section 5649-9d is as follows:

“The question of issuing bonds shall always be submitted to popular vote at a November election, except that whenever it is necessary to rebuild or

repair public property wholly or partially destroyed by fire or other casualty, the question of issuing bonds to rebuild or repair said property or to build a new similar property in lieu of repairing or rebuilding said property may be submitted to popular vote at a special election called for that purpose with the consent of the Tax Commission of Ohio.

In such case the bond-issuing authority of said subdivision shall submit said question to the Tax Commission of Ohio, and if said Tax Commission of Ohio finds that the submission of said question at a special election is necessary to meet the requirements of the people of said subdivision, it shall certify said fact together with its written consent to the bond-issuing authority desiring to have said special election called. Thereupon the requirements of Sections 2, 3 and 4 of this act shall apply but all references in said sections to the November election shall be taken to refer to the date of said special election instead of the November election therein referred to. The provisions of Sections 2, 3, 4 and 5 of this act (G. C., Secs. 5649-9a, 5649-9b, 5649-9c and 5649-9d) shall supersede the various provisions of law governing the issue of bonds of any bond-issuing authority, the passage of resolutions, the publication of notices, the holding of elections, the form of the ballot, the percentage of vote required, the time of holding elections and the levy of taxes, in so far as they are inconsistent herewith."

The last quoted section by express terms supersedes all other provisions of law relative to the holding of elections to authorize an issue of bonds. It is the later enactment and, therefore, undoubtedly any contrary provisions found in Section 7630-1 of the General Code, would no longer be effective.

However, I call your attention to the fact that Section 7630-1 does not authorize the holding of a special election except to authorize the issuance of bonds "for the purpose of rebuilding or repairing a schoolhouse wholly or partly destroyed by fire or other casualty, or for the purpose of building a new school house for the proper accommodation of the schools of the district in lieu of repairing or rebuilding such school house destroyed by fire or other casualty."

It seems scarcely necessary to point out that the words "other casualty" were not intended to cover a case in which the use of a school house is prohibited by order of the Department of Industrial Relations. If these words were so comprehensive, there would be no necessity for the specific reference in Section 7630-1, General Code, to such an order.

It is apparent, therefore, that by the terms of neither section is a special election authorized for the submission to popular vote of the question of the construction of a new schoolhouse, where the use of any school house is prohibited by an order of the Department of Industrial Relations.

You are, therefore, advised that it will be impossible to submit the question of the issuance of the bonds referred to in your inquiry at any election other than a general election.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*