

If, however, the transfers, or either of them, are not made until after the funds arising from the sale of the notes are encumbered by the letting of contracts against them, it manifestly would be unfair and inequitable to require Bloom Township District to assume a proportionate share of the indebtedness on the basis of tax valuation alone, and not give to it the corresponding share of funds, and this of course could not be done as the funds incident to the indebtedness would no longer be available for division.

Coming now to a consideration of your specific questions, in the order asked, I am of the opinion:

First, indebtedness chargeable to a subdivision, as being incident to an issue of bonds authorized by a vote of the people, becomes a charge against the subdivision as soon as notes are sold in anticipation of the sale of the bonds. An obligation to repay according to the tenor of the notes is created at that time. Of course, so long as the proceeds of the sale of the notes remain in the treasury of the subdivision unencumbered by an obligation to expend the money, the net indebtedness of the subdivision remains the same as before the notes were sold.

Second, when school territory is transferred from one school district to another, by authority of either Section 4692 or 4696, General Code, and an equitable division of the funds and indebtedness is made between the districts involved in the transfer, the funds and indebtedness so divided should be considered as of the effective date of the transfer.

Third, in making an equitable division of funds and indebtedness between school districts many elements are to be considered, and what is an equitable division in any specific case is dependent on the facts peculiar to the immediate case, as I have indicated above.

Fourth, when school territory is transferred from one county school district to an adjoining county school district by authority of Section 4696, General Code, an equitable division of the funds and indebtedness between the districts involved shall be made by the board of education of the county school district to which the territory is transferred, and in the absence of an abuse of discretion in making such division, the division so made by said county board of education is final.

Respectfully,

GILBERT BETTMAN,
Attorney General.

99.

**BUILDING COMMISSION—FOR ERECTION OF BUILDING AS ADDITION
TO COUNTY INFIRMARY—APPOINTMENT BY COMMON PLEAS
COURT—WHEN GOVERNOR SELECTS HOSPITAL TRUSTEES.**

SYLLABUS:

1. *Unless the procedure prescribed in Sections 3127 and 3131, General Code, for a tax levy or bond issue to purchase, appropriate or construct a county hospital or hospital buildings, is taken, the Governor of the State is without power or authority to appoint a Board of County Hospital Trustees.*
2. *When the County Commissioners have determined the necessity therefor, and the electors of the County have by an election, authorized the issuance of bonds for the purpose*

of erecting and equipping a fireproof county building as an addition to the county infirmary, the Judge or Judges of the Court of Common Pleas, under the provisions of Section 2333, General Code, are authorized to appoint four suitable and competent freehold electors of the county who, in connection with the county commissioners constitute a building commission to serve until said building is completed.

COLUMBUS, OHIO, February 16, 1929.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

“At the last general election the voters of the county approved an issue of bonds for an addition to the county infirmary. The judges of the Court of Common Pleas appointed four electors of the county to serve with the members of the board of county commissioners as a building commission to build said addition. The members of the board of commissioners at the time they passed the resolution determining the necessity to erect said addition, had in mind that said addition should be a hospital unit of the infirmary. The question has now been raised as to whether or not the Governor of Ohio should appoint the building commission as provided by Section 3131 of the General Code.

I am submitting a transcript of the proceeding herewith.

Will you kindly give us your opinion as to whether the Governor should appoint the building commission or whether the commission heretofore appointed has been legally constituted?”

With your communication you have submitted a sample of the Official Bond Ballot of Lucas County furnished to electors at the election held November 6, 1926. You have also submitted copy of the letter from the chairman of the building commission appointed under the provisions of Section 2333, General Code. In addition to the foregoing, you have submitted a transcript of the proceedings of the county commissioners of Lucas County.

The letter from the chairman of said building commission reads in part, as follows:

“For many years, the Lucas County Commissioners have maintained in connection with the Lucas County Infirmary a building in which hospital care and treatment has been provided for the infirm and indigent. The building used for this purpose having become greatly over crowded and inadequate, and relief being imperative, the county commissioners determined to submit the following question to the electors of the county:

* * * * *

OFFICIAL BOND BALLOT OF LUCAS COUNTY

BOND ISSUE FOR ADDITION TO COUNTY INFIRMARY

Shall bonds be issued by the Board of Lucas County Commissioners for the purpose of erecting and equipping a fireproof county building as an addition to the county infirmary in the sum of \$950,000.00 and a levy of taxes be made outside of the fifteen mill limitation estimated by the county auditor to average .0874 mills for a maximum period of twenty-five years, to pay the principal and interest of such bonds?

FOR THE BOND ISSUE
AGAINST THE BOND ISSUE

* * * * *

One of the ballots such as was used at the election is attached hereto.

The foregoing question was submitted at the general election in November, 1928, and was determined in the affirmative.

Thereupon, under the provisions of Section 2333, General Code, application was made to the Judges of the Court of Common Pleas of Lucas County for the appointment of four suitable and competent freehold electors to serve with the county commissioners as a building commission.

Such appointment was made by the judges and the persons so appointed duly qualified, and together with the county commissioners met and organized as a building commission to carry out the purpose of the bond issue.

Although the ballot made no reference to a hospital, the campaign publicity was for a new infirmary hospital to relieve the present overcrowded and intolerable condition at that institution. The building to be erected under this bond issue is not intended for general hospital work, but is to be used solely in connection with the county infirmary for the care of the indigent and infirm, and is to be located on the infirmary lands adjacent to existing building, and to be heated and lighted from the present infirmary power plant.

A question is now raised as to the legality and power of the building commission organized as above set forth. It is suggested that Section 2333, General Code, and the sections following relating to such building commission are not applicable to the project sought to be accomplished. It is suggested that the procedure must be under Section 3127, General Code, as amended in 112 Ohio Laws 381 and the sections following relating to the construction of hospitals.

The building commission therefore desires your opinion, and if agreeable to you, the opinion also of the Attorney General, as to whether under the facts above stated, the building commission is a legal organization with power to proceed under Section 2333 General Code and its related sections, or whether Section 3127 General Code and its related sections must govern in the construction of the proposed building."

In the certified transcript of the proceedings pertaining to said bond issue, the copy of the preliminary resolution passed by the County Commissioners of Lucas County on August 27, 1928, reads in part, as follows:

"BE IT RESOLVED, By the Board of County Commissioners of Lucas County, Ohio, that it hereby declares it necessary to issue bonds of the county in the sum of \$950,000.00 for the purpose of erecting and equipping a fireproof county building as an addition to the county infirmary and hereby determines to erect the same; that said bonds will be dated December 10, 1928, bear interest at the rate of five per cent. per annum and shall mature in twenty-five years from the date of issue; and that it is necessary to make a levy of a tax outside of the fifteen mill limitation to pay the interest on and to retire said bonds; * * *."

It is therein stated that the proposed issue of bonds is for "the purpose of erecting and equipping a fireproof county building as an addition to the county infirmary".

On August 30, 1928, said board of county commissioners passed a resolution that a copy of their resolution of August 27, 1928, be certified to the Deputy State Supervisors and Inspectors of Elections of Lucas County.

On September 4, 1928, said board of county commissioners passed the following resolution.

"BE IT RESOLVED, By the Board of County Commissioners of Lucas County, Ohio, that the clerk of this board be, and she is hereby, authorized and directed to have published in the Toledo Blade, Toledo News-Bee and Toledo Times, newspapers printed and of general circulation in Lucas County, for the time and in the manner provided by law in Section 2293-21 of the General Code of Ohio, the following notice, to-wit:

NOTICE

There will be submitted to the electors of Lucas County at the general election to be held November 6, 1928, the proposition of the issuing of bonds by the Board of County Commissioners of Lucas County, Ohio, for the purpose of erecting and equipping a fireproof county building as an addition to the county infirmary, in the sum of \$950,000.00 and the levying of taxes outside of the limitations of Section 2293-19 and other governing sections of the General Code of Ohio, estimated by the county auditor to average .0874 mill for a maximum period of twenty-five (25) years to pay the principal and interest on said bonds."

This notice indicates that the question to be submitted to the electors of Lucas County was a proposition of the issuing of bonds for "the purpose of erecting and equipping a fireproof county building as an addition to the county infirmary".

As indicated in the letter of the chairman of the building commission, this was the identical question submitted to the electors of Lucas County.

It is stated in your communication that "the members of the board of commissioners at the time they passed the resolution determining the necessity to erect said addition, had in mind that said addition should be a hospital unit of the infirmary".

It is also stated in the letter of the chairman of the building commission to you, that in the building maintained in connection with the Lucas County Infirmary, a building in which hospital care and treatment has been provided for the infirm and indigent, said building had become greatly overcrowded and inadequate, and that the county commissioners determined to submit the question of the issuance of bonds to the electors of the county. It is also stated in said letter that, although the ballot made no reference to a hospital, the campaign publicity was for a new infirmary hospital to relieve the present overcrowded condition at said institution. It is then added that the building to be erected under this bond issue is not intended for general hospital work, but is to be used solely in connection with the county infirmary, for the care of the indigent and infirm, and is to be located on the infirmary lands, adjacent to the existing building and to be heated and lighted from the present infirmary power plant.

There is absolutely nothing in the transcript, however, to show that there was even an intention to submit to the electors of Lucas County, the question of the issuance of bonds for the purpose of purchasing, appropriating or constructing a county hospital. The resolutions of the county commissioners, the notice to the electors of Lucas County that there would be submitted to them at the general election to be held November 6, 1928, the proposition of the issuance of bonds by the board of county commissioners of said county, and the ballot cast by said electors at said election, all clearly indicate that the question voted upon at said election was, whether bonds should be issued by said board of county commissioners "for the purpose of erecting and equipping a fireproof county building as an addition to the county infirmary, in the sum of \$950,000.00 and the levying of taxes outside of the fifteen mill limitation".

It is evident that the entire procedure herein was had under the provisions of Section 2333, General Code, which reads as follows:

“When county commissioners have determined to erect a court house, or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners shall apply to the judge of a court of common pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party. (98 v. 53 Sec. 1).”

Under the authority therein expressed, the Common Pleas Judges of Lucas County (according to the journal entry in said transcript) appointed four freehold electors to constitute, in connection with the county commissioners, a building commission.

The question is now raised as to whether in view of the foregoing procedure, the appointment of said building commission, by the Judges of the Common Pleas Court, under authority of Section 2333, General Code, is legal, or whether the procedure should have been taken under provisions of Sections 3127 and 3131, General Code, and the appointment of a board of county hospital trustees made under authority therein granted.

Section 3127 of the General Code reads as follows:

“The county commissioners shall have power to purchase, appropriate, construct, enlarge, improve and rebuild a county hospital or hospital buildings. But no money shall be expended for the original purchase, appropriation or construction thereof, until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them in the manner provided by law. Such hospital may be designated as a monument to commemorate the services of the soldiers, sailors, marines and pioneers of the county.”

This section authorizes the county commissioners to purchase, appropriate, construct, enlarge, improve and rebuild a county hospital or hospital buildings, but the original purchase, appropriation or construction thereof is prohibited until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them in the manner provided by law.

It is noted that the question to be submitted to the electors of the county and approved by them is as to a tax levy or bond issue for the purpose of purchasing, appropriating or constructing a county hospital or hospital buildings.

Section 3131 of the General Code reads in part, as follows:

“If a tax levy or bond issue for such purpose is approved by vote of the electors in the manner provided by law, the deputy state supervisors of elections for such county shall certify the result of such election to the governor of the state; whereupon the governor shall, within ten days after the receipt of such certification, appoint a board of county hospital trustees, composed of four freeholders of such county.

NOTIFICATION OF APPOINTMENT. Such board shall be bi-partisan, with two members from each of the two political parties casting the highest number of votes in such county for their respective candidates for governor at the next preceding gubernatorial election. And the governor shall forthwith notify the persons so selected of their appointment as such trustees, by mail, and fix a date not more than ten days later when such trustees shall meet at the county seat of such county to organize such board."

This section provides that if a tax levy or bond issue for any of the purposes stated in Section 3127 of the General Code, is approved by the vote of the electors, in the manner provided by law, said approval shall be certified to the governor of the state. It then becomes the duty of the governor to appoint a board of county hospital trustees, composed of four freeholders of such county. It is clear that the authority of the governor to appoint said board of county hospital trustees, depends upon whether or not the electors of the county, in the manner provided by law, have approved the tax levy or bond issue for the purpose of purchasing, appropriating or constructing a county hospital or hospital buildings.

As heretofore stated herein, there is absolutely nothing in the record or transcript of said proceedings of the County Commissioners of Lucas County, or the election held in pursuance thereto to show that the electors of Lucas County approved a tax levy or a bond issue for any of said purposes indicated in Section 3127, G. C. The County Commissioners of Lucas County proceeded under the authority of Section 2333 of the General Code, and the election upon the question of issuing bonds was held under the provisions of said section.

The question submitted to the electors of Lucas County was not as to whether bonds should be issued for the purpose of purchasing, appropriating or constructing a county hospital or hospital buildings, but as to whether bonds should be issued for "the purpose of erecting and building a fireproof county building as an addition to the county infirmary". Your letter states that the board of county commissioners, at the time they passed the resolution determining the necessity to erect the addition, had in mind that the addition was to be a hospital unit of the infirmary. From this statement, and additional statements found in the letter from the chairman of the building commission, it is apparently clear that this unit is intended to be used solely as an incident to the county home, and not for general hospital work. I feel that provision for hospital facility for those admitted to the county home would be a proper incident of the operation of the home and a building to be devoted solely to this purpose would not be a county hospital within the purview of Sections 3127, et seq., of the General Code.

In consideration of the foregoing discussion and statutes cited, it is my opinion that, as the building for which the issuance of bonds was authorized by the electors was not a county hospital, manifestly there was and is no occasion for the appointment by the governor of a board of county hospital trustees under authority of Section 3131 of the Code, supra.

It appearing from the record and transcript herein submitted, that the necessary procedure was taken under Section 2333, General Code, to authorize the Judges of the Court of Common Pleas of Lucas County, to appoint four suitable and competent freehold electors of the county to constitute, in connection with the county commissioners, a building commission, to serve until the completion of said building, such appointment was legal and said building commission is duly constituted.

Respectfully,
GILBERT BETTMAN,
Attorney General.