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BONDS—UNIFORM BOND ACT—TO REMODEL, EQUIP AND FURNISH MEMORIAL BUILDING—ERECTED SHORTLY AFTER YEAR 1910 UNDER THEN EXISTENT STATUTES—COUNTY COMMISSIONERS—MAY ISSUE THE BONDS, SECTION 2433 GC, SECTION 307.02 RC—THE BONDS MAY NOT BE ISSUED UNDER SECTION 3059-1 GC, SECTION 345.02 RC.

SYLLABUS:

Bonds may be issued by the board of county commissioners under the provisions of Section 2433, General Code, Section 307.02, Revised Code, and under the provisions of the Uniform Bond Act and particularly under Section 2293-2 thereof, Section 133.24, Revised Code, for the purpose of remodeling, equipping and furnishing a memorial building erected shortly after the year 1910 under the statutes as they then existed; such bonds, however, may not be issued under Section 3059-1, General Code, Section 345.02, Revised Code.

Columbus, Ohio, September 15, 1953

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The Memorial Building of Montgomery County was erected shortly after the deed for the property was acquired January 4, 1910. It is located on East First Street between Jefferson and St. Clair Streets, Dayton, Ohio.

“The building has become old and out of date for present use and the County Commissioners desire to remodel and re-equip the same to install air conditioning to it. The remodeling will necessitate the tearing out of the rear wall for the purpose of resetting the stage, etc. The total cost the Board estimates will be about Three Hundred Thousand Dollars. About one-half would be for remodeling and one-half for equipping. The Board desires to submit a bond issue to the electors for that purpose.

“Section 3059-1 provides that the power to issue bonds is for the purpose of purchasing a site, erecting, equipping and furnishing, or for establishing a memorial to commemorate the services of all members and veterans of the armed forces of the United States.

“The authority to remodel the building is not mentioned in the authority conferred by the Section to issue bonds. The improvements considered by the Board of County Commissioners would make the building suitable for all the purposes for which memorial buildings are intended. The present condition of the building makes it a burden on the taxpayers.

“I desire your opinion as to whether Section 3059-1 permits a bond issue for the purpose of remodeling, equipping and furnishing the building. Can the authority to erect, construct or build be construed to include the authority to reconstruct or rebuild—at least partially rebuild?

“The Board desires, if possible, to submit the matter to the electors this coming November.”

Your request states that the memorial building mentioned therein was erected shortly after the year 1910. At that time Section 3068, General Code, see Page and Adams Annotated Code for 1910, Vol. 1, provided

that after the completion of the memorial building, the trustees "shall turn it over to the county commissioners who shall provide for the maintenance, equipment, decoration and furnishing thereof * * *." Later, this section was amended to provide that upon completion the building trustees "shall transfer the same to the county and the title of such site and buildings shall thereupon vest in the county"; and further provided for the appointment of a permanent board of trustees by the Common Pleas Court, to manage, control and supervise such memorial buildings and grounds. The above mentioned statutes and amendments thereto were repealed in 1945, 121 Ohio Laws, 294, and new statutes with reference to the erection of memorials were enacted, such statutes being presently numbered Sections 3059 to 3069-1, General Code, Sections 345.01 to 345.18, Revised Code.

You now desire to know whether a bond issue for the purpose of "remodeling, enlarging and furnishing" a memorial building erected under the former sections, is permitted under the present act, and particularly under Section 3059-1, General Code.

Before rendering an interpretation of Section 3059-1, General Code, I should point out that it is my opinion that under the facts which you have presented, the county commissioners have authority to remodel the memorial building under the provisions of Section 2433, General Code, Section 307.02, Revised Code. That section authorizes county commissioners to "construct, enlarge, improve, rebuild, equip and furnish" certain designated buildings and "other necessary buildings." Under the facts of this case, whereby the commissioners have had placed upon them the duty of maintaining an old memorial building which they did not construct, I believe that they have considerable discretion in designating such a structure as an "other necessary building" within the meaning of Section 2433.

The provisions of the Uniform Bond Act, Section 2293 et seq., General Code, Section 133.01 et seq., Revised Code, are applicable to the issuance of bonds for the purpose of paying for such remodeling. Section 2293-2, General Code, in particular should be noted. The pertinent part of this statute is as follows:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. * * *"

Permanent improvement is defined in Section 2293-1 (e) as "in-

cluding reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more.”

You have asked in particular, however, as to the authority to issue bonds for the remodeling, under Section 3059-1, General Code. This section reads in part as follows:

“The taxing authority of any municipality, township or county shall have power to issue the bonds of such subdivisions for the purpose of purchasing a site, erecting, equipping and furnishing, or for establishing a memorial to commemorate the services of all members and veterans of the armed forces of the United States. * * *”

Shortly after the enactment of the present statutes there was presented to this office, among other questions, the question with regard to the status of memorial buildings constructed under the former sections. See Opinion No. 702, Opinions of the Attorney General for 1946, page 25. The then Attorney General concluded that the control of county memorial buildings erected under the old sections was cast upon the county commissioners, and further stated that the new statutes were not relevant to memorial buildings previously erected, but related only to those erected or to be erected after the effective date of the new law. With this view I am in accord.

Even were I to assume that Section 3059-1, General Code, applies to memorials erected prior to the date of its enactment, it is further to be noted that this section does not provide for rebuilding or remodeling of any building, nor does it contain any specific provision permitting a bond issue for the purpose of remodeling of an existing memorial building erected under the former statutes.

Accordingly, it is my opinion that bonds may be issued by the board of county commissioners under the provisions of Section 2433, General Code, Section 307.02, Revised Code, and under the provisions of the Uniform Bond Act and particularly under Section 2293-2 thereof, Section 133.24, Revised Code, for the purpose of remodeling, equipping and furnishing a memorial building erected shortly after the year 1910 under the statutes as they then existed; such bonds, however, may not be issued under Section 3059-1, General Code, Section 345.02, Revised Code.

Respectfully yours,

C. WILLIAM O'NEILL

Attorney General