

county or a person appointed as special assistant to the prosecuting attorney under the provisions of section 2412, General Code. See Annual Report of the Attorney General for the year 1914, Vol. II, page 1415.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3256.

VILLAGE SCHOOL DISTRICT—WHEN UNAUTHORIZED TO REPLENISH GENERAL FUND OF COUNTY WITH PROCEEDS OF BOND ISSUE FOR CONSTRUCTION OF PERMANENT IMPROVEMENT—NOTES NOT ISSUED IN ANTICIPATION OF BOND ISSUE ILLEGAL—EXCEPTION—WHEN BONDS ISSUABLE WITHOUT VOTE OF PEOPLE.

*SYLLABUS:*

1. *In the event moneys from the general fund have been expended for the purpose of acquiring or constructing a permanent improvement, the proceeds of a bond issue authorized for the purpose of acquiring or constructing such improvement may not be used to replenish the general fund which has been so depleted.*

2. *Except as provided in Section 2293-7, General Code, a school district may not issue notes for the acquisition or construction of a permanent improvement which notes are not issued in anticipation of the issuance of bonds.*

3. *A school district may issue bonds without a vote of the people within the limitations of Section 2293-15, General Code, to run for a period of one year, providing such district has a sufficiently large tax duplicate to retire such bonds in such period of time by a levy within the fifteen mill limitation.*

COLUMBUS, OHIO, May 26, 1931.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We have a peculiar situation in one of our school districts and I would greatly appreciate your opinion in the matter. The facts are as follows:

The North Canton Village School District issued and sold \$95,000 of bonds for the building of a fireproof school building. The final cost of the building was \$120,000, or \$25,000 above the amount of bonds sold. At the present time the school board is short on funds. They would like to issue notes or bonds for the sum of \$10,000 without a vote of the people. There has been no net indebtedness incurred without a vote of the people on the property in the school district so that under Section 2293-15 they might have the right to raise the \$10,000. However, the money that they wish to raise by the sale of the note or bonds is to be put back into the general fund to replace moneys spent on the school building out of the general fund.

I am not certain whether this could be done at all. Could they proceed to issue a note for \$10,000, for the purpose of paying on a fireproof

school building which has already been constructed and then levy a tax which would pay off the note in one year? That is what they desire to do, inasmuch as they have a large duplicate and are not near to the fifteen mill limitation, they could easily pay the money back in one year. Hence, they do not want to issue bonds, but simply one note for \$10,000, or if they have no authority to issue a note without later issuing bonds to pay off said note, then could they issue bonds in a case like this and how long would the bonds have to run? Could one issue bonds for just a year or two, and would it be legal to issue bonds to raise \$10,000 where the building is already constructed?

In case notes and bonds cannot be issued, is there any way by which \$10,000 could be issued at the present time to take care of their financial situation?

Your opinion would be greatly appreciated on these questions."

Under the provisions of Section 2293-2, General Code, which section is part of the Uniform Bond Act, boards of education are authorized to issue bonds of their school districts for the purpose of acquiring or constructing any permanent improvement which school districts are authorized to acquire or construct. While it is true that bonds which are authorized for the purpose of replenishing the general fund to the extent that it has become depleted by expenditures therefrom for a permanent improvement, are issued indirectly for the purpose of acquiring or constructing a permanent improvement, such procedure is not authorized in view of the provisions of the Budget Law. Section 5625-10, General Code, clearly precludes the payment of the proceeds from the sale of a bond issue into the general fund when such bonds are authorized for the purpose of acquiring or constructing a permanent improvement. This section provides in part as follows:

"All proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision."

The foregoing section provides that "Money paid into any fund shall be used only for the purposes for which such fund is established."

In specific answer, therefore, to your first question, it is my opinion that in the event moneys from the general fund have been expended for the purpose of acquiring or constructing a permanent improvement, the proceeds of a bond issue authorized for the purpose of acquiring or constructing such improvement may not be used to replenish the general fund which has been so depleted.

You next inquire as to the authority to issue notes for the purpose of acquiring or constructing a permanent improvement, which notes are not to be issued in anticipation of the issuance of bonds. Section 2293-24, General Code, contains the general authority whereby boards of education may issue notes for such purpose. This section provides that "Subdivisions may borrow money and issue notes, due and payable not later than two years from the date of issue, in anticipation of the levy of special assessments or of the issuance of bonds as provided in this section." The Uniform Bond Act contains two exceptions to this general provision that notes may be issued only in anticipation of the issuance of bonds. Section 2293-4, authorizes the issuance of six-months notes in anticipation of the collection of current

revenues and Section 2293-7 authorizes the issuance of short time notes to take care of certain emergencies therein set forth.

You state that the school district has a sufficiently large duplicate to raise the money needed in one year. I assume that the desire to issue notes is predicated upon a belief that bonds may not be issued to run such a short period of time. In this connection, Section 2293-9, General Code, provides a schedule of maximum maturities of bonds issued for various purposes. There is no limitation contained in the Uniform Bond Act or elsewhere as to minimum maturities of bonds. Of course, bonds may only be issued for the purpose of acquiring or constructing a permanent improvement, and permanent improvement is any property or asset or improvement with an estimated life or usefulness of five years or more. Section 2293-1, General Code. There is no requirement, however, that the bonds run for that length of time. Generally speaking, the only limitation as to the minimum period of time which bonds for any purpose may run arises as a result of a computation of the **levy that is necessary** to meet the interest and principal requirements of such bonds, that is to say, in the case of an unvoted issue, for instance, if the tax duplicate is such that the maximum levy which may be made within the fifteen mill limitation will not produce enough revenue to retire the bonds and pay the interest thereon in less than three years, such bonds may not, of course, be issued to run for a period less than three years.

Specifically answering your next question, it is my opinion that a school district may issue bonds without a vote of the people within the limitations of Section 2293-15, General Code, to run for a period of one year, providing such district has a sufficiently large tax duplicate to retire such bonds in such period of time by a levy within the fifteen mill limitation.

You next inquire in substance as to whether or not bonds or notes may be issued to pay the cost of constructing a building where the building is already constructed. The Uniform Bond Act perhaps contains no language which expressly prohibits such a procedure. Before a building costing \$10,000.00 may be constructed, it is necessary that a contract for such construction be entered into. Section 7623, General Code. Under Section 5625-33, General Code, such contract may not be executed until funds are on hand or appropriated for such purpose. Therefore, when bonds or notes are to be issued to pay the cost of constructing such a building, such bonds or notes may not be issued after the building is constructed.

Finally, you inquire as to whether or not there is any way in which the district in question might raise \$10,000 to take care of the present financial situation. I direct your attention to Section 2293-4, General Code, hereinabove mentioned, which section provides as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or

issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

Under the foregoing section, six months notes may be issued by the district in question, thereby affording some relief to the present financial situation, temporary though it be. In view of the discussion hereinabove contained, it is my opinion, from a consideration of the facts which you have submitted, that this is the only section of the General Code which may be invoked to temporarily relieve this situation.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3257.

APPROVAL, BONDS OF SANDUSKY COUNTY, OHIO—\$7,164.73.

COLUMBUS, OHIO, May 26, 1931.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3258.

APPROVAL, BONDS OF VILLAGE OF MILTON, MIAMI COUNTY, OHIO  
—\$2,000.00.

COLUMBUS, OHIO, May 26, 1931.

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

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3259.

APPROVAL, BONDS OF LIBERTY TOWNSHIP RURAL SCHOOL DISTRICT, ADAMS COUNTY, OHIO—\$24,000.00.

COLUMBUS, OHIO, May 26, 1931.

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

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3260.

APPROVAL, BONDS OF GRANDVIEW HEIGHTS VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$14,000.00

COLUMBUS, OHIO, May 26, 1931.

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