

OPINION 65-94

Syllabus:

The Board of Education cannot legally proceed with the performance of less than the entire stated purpose for

which the bond issue was approved, i.e., constructing additions to and improving elementary school buildings and constructing a physical education facility, including site development.

To: Marshall E. Peterson, Greene County Pros. Atty., Xenia, Ohio
By: William B. Saxbe, Attorney General, May 26, 1965

The situation for which you request my opinion is as follows:

"The electors of the Beavercreek Local School District, Greene County, Ohio, voted their approval of a \$270,000.00 bond issue on November 3, 1964. The declared purpose of the bond issue, the purpose conveyed to the electors, was to construct additions to and improve elementary school buildings and to construct a physical education facility, including site development. When formal bids for the construction were received, the Board of Education found itself substantially short of money to perform all the construction mandated by approval of the bond issue."

The issue presented is whether or not the Board of Education can legally proceed with the performance of less than the entire stated purpose for which the bond issue was approved. It is my opinion that the Board of Education may not proceed with the performance of less than the entire purpose.

The resolution declaring the necessity for a bond issue shall relate to only "one purpose." Section 133.10, Revised Code is as follows:

"The resolution provided for in section 133.09, of the Revised Code shall relate only to one purpose. "one purpose" includes, in the case of a county or township, any number of roads, highways, bridges, and viaducts; in the case of a municipal corporation, any number of streets, bridges, and viaducts, including the municipal corporation's share in streets to be improved in part by assessment; in the case of a school district, any number of school buildings; and in any case, all expenditures, including the acquisition of a site and purchase of equipment, for any one utility, building, or other structure, or group of buildings or structures for the same general purpose, or for one or more roads, highways, bridges, and viaducts included in the same resolution."

The Supreme Court of Ohio in The State, ex rel. v. Carney, 163 Ohio St. 159, construed Section 133.10, Revised Code, at page 184, as follows:

"The purpose of the statute is to prevent the union in one act of diverse, incongruous and disconnected matters, having no relation to or connection with each other * * *; to give electors a

choice to secure what they desire without the necessity of accepting something which they do not want * * *; and to prevent double propositions being placed before a voter having but a single expression to answer all propositions, thus making logrolling impossible* * *."

This construction was adopted substantially as set out above in the case, State, ex rel. v. Thompson, 167 Ohio St. 23.

The electors of the Beavercreek Local School District voted upon a definite proposal and chose what they desired. Their approval of the bond issue mandated that all constituting the purpose of the bond issue as set forth in the resolution should be done.

Three opinions of the Attorney General of Ohio furnish authority for the conclusion that the Board of Education cannot proceed with the performance of less than the total stated purpose.

Opinion No. 4510, Opinions of the Attorney General for 1932, Syllabus One, at page 869, states:

"Proceeds of a bond issue may be used only for the purpose for which the bonds were authorized, except that in the event of the abandonment of the project after the sale of bonds, such proceeds are properly transferable to the bond retirement or the sinking fund."

Opinion No. 1648, Opinions of the Attorney General for 1950, Syllabus One, at page 222, is as follows:

"The entire proceeds of the sale of bonds issued by a board of education for the purpose of constructing a group of fireproof school buildings, to wit: 'A vocational-agricultural school building, a school stadium and a school swimming pool and furniture and furnishings' may not be expended for the construction of a school stadium'".

The syllabus of Opinion No. 6873, Opinions of the Attorney General for 1956, page 550, is as follows:

"Proceeds from the sale of bonds voted for the purpose of providing for the construction of a fireproof, elementary school building and a gymnasium, the making of alterations and improvements in fireproof and non-fireproof school buildings, and for the improvement of school grounds and playgrounds and as so provided in the resolutions of the board of education passed prior to the election may not be used to purchase an existing building (real estate) to be used for school purposes."

The Revised Code sections cited above and other authority compel the conclusion that bond issue funds must be used for the purpose for which voted.

Section 5705.10, Revised Code (Uniform Tax Levy Law), provides in its pertinent part:

" * * * * * * * * * * * * * * *"

"All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

" * * * * * * * * * * * * * * *"

"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, and any interest earned on money in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision."

Section 133.36, Revised Code (Uniform Bond Law), provides:

" * * * * * * * * * * * * * * *"

"The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds or notes are issued and sold and used only for the purpose set out in the resolution or ordinance of the taxing authority, and all moneys from premiums and accrued interest shall be paid into the sinking fund or bond retirement fund from which said bonds or notes are to be redeemed. If anticipatory notes have been issued, the moneys remaining from the proceeds of sale of such notes, and the moneys from the sale of bonds shall be used for the purpose of paying such anticipatory notes."

It should be noted that the amount expended on the various elements of the purpose for which a bond issue is approved is within the discretion of the Board of Education. Opinion No. 1648, Opinions of the Attorney General for 1950, supra, provides in syllabus No. 2:

"It is within the sound discretion of the board of education to determine what portion of the fund derived from the proceeds of the sale of bonds issued by them for the purpose stated in syllabus 1 shall be expended for the school stadium construction."

Should the Board of Education abandon the performance of the construction and development mandated, the proceeds of any bonds issued must be committed to the bond retirement fund. This procedure for abandonment was referred to in Opinion No. 4510, Opinions of the Attorney General for 1932, supra.

It is my opinion and you are advised that the Board of Education cannot legally proceed with the performance of less than the entire stated purpose for which the bond issue was approved, i.e., constructing additions to and improving additions to and improving elementary school buildings and

constructing a physical education facility, including site development.