

In view of the foregoing I do not feel that further discussion of your inquiry is necessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

763.

APPROVAL, ARTICLES OF INCORPORATION OF THE MONARCH
INSURANCE COMPANY.

COLUMBUS, OHIO, August 19, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning herewith Articles of Incorporation of the Monarch Fire Insurance Company, with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

764.

SCHOOL DISTRICT—SURPLUS OF GENERAL FUND LEGALLY USED
FOR EQUIPPING SCHOOL BUILDING—CONTRACTING FOR BUILD-
ING IN EXCESS OF AMOUNT VOTED BY ELECTORS UNAUTHOR-
IZED—EXCEPTION—BUDGET COMMISSION.

SYLLABUS:

1. *A surplus appearing in the general fund of a school district may be legally used for purchasing needed equipment for a school building.*
2. *If a board of education has, pursuant to vote of the electors, authorized \$90,000.00 bonds for the purpose of constructing and equipping a school building, such board has no authority to contract for such building under a plan involving an estimated expenditure for such building and equipment in an amount in excess of that sanctioned by the voters, except in cases when such excess may be met by surplus available funds on hand.*
3. *Powers and duties of budget commission discussed.*

COLUMBUS, OHIO, August 19, 1929.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date, which is as follows:

“I am in receipt of the following letter from Algernon Payne, clerk of the Mantua school board:

‘Regards financing the purchase of equipment for our new school building in our village, the board of education wishes to obtain the following informa-

tion from the Attorney General and Accounting Department through your office:

Will it be legal to use our surplus now in the general fund towards purchasing needed equipment for our new building?

We have in mind to present this ruling to the budget commission and if favorable, then request them to make additional levy for the balance of money to buy equipment. We have been informed that one-half would be available after January next and the other half after July.

We fear the budget commission on seeing that we now have five or six thousand surplus in our general fund, which has accumulated from careful business management, might determine to decrease our next year's levy that much and force us to operate new building without equipment, until we could obtain another bond issue to buy equipment.

I might suggest by way of additional information that this school district last year voted a ninety thousand dollar bond issue, distributed as follows: Seventy-eight thousand dollars for construction purposes, ten thousand dollars for equipment, and two thousand dollars for interest. The board has used nearly the entire ten thousand dollars equipment fund for construction purposes.

Will you kindly render me an opinion in response to the questions contained in the foregoing letter?"

With reference to the question of whether or not a surplus in the general fund of a school district may be used for the purpose of purchasing equipment for a school building, such equipment is generally conceded to be a permanent improvement within the meaning of Section 2293-1 of the General Code, which is part of the Uniform Bond Act, and is included within the term "furniture and furnishings" specified under Class (E) of Section 2293-9, General Code.

The general fund of a subdivision is made up of certain revenue, which is specified in the first paragraph of Section 5625-10, General Code, as follows:

"All revenue derived from the general levy for current expense within the fifteen mill limitation; from any general levy for current expense authorized by vote outside of the fifteen mill limitation; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund."

The purposes for which the general levy for current expenses may be used are set forth in Section 5625-5, General Code, which is in part as follows:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but except the construction, reconstruction, re-surfacing or repair of roads and bridges in counties and townships and the payment of debt charges. * * *

A consideration of these sections clearly discloses that, first, the general levy for current expenses shall be paid into the general fund, and, second, that one of the purposes of the general levy for current expenses is the acquisition or construction of permanent improvements.

I am, therefore, of the opinion that a surplus appearing in the general fund of a school district may be legally used for purchasing needed equipment for a school building.

The next paragraph of the letter submitted contains a statement to the effect that the board of education intends to request the Budget Commission to make an additional levy for money needed to buy equipment. In this connection, attention is called to the fact that the budget law grants no authority to a budget commission to make a levy. This authority is vested solely in the taxing authority, which, in the case of a school district, is the board of education. Paragraph (c), Section 5625-1. Under Paragraph (a), Section 5625-6, a board of education is authorized to make a special levy within the fifteen mill limitation without a vote of the people for any specific permanent improvement, which includes such equipment as contemplated, as hereinbefore mentioned. In the event a special levy is made for such purpose, the board must establish a special fund therefor as provided in Paragraph (d) of Section 5625-9. Your attention is further directed to the fact that the annual tax budget, which must be adopted on or before July 15 of each year by the taxing authority, as provided in Section 5625-20, may contain a statement of the expenditures for the ensuing fiscal year necessary for permanent improvements, exclusive of any expenses to be paid from bond issues. Section 5625-21.

Coming now to the question of the surplus appearing in the general fund on account of which it is stated that the Budget Commission might determine to decrease the next year's levy made by the board, it must be borne in mind that any available unencumbered balance now appearing in the general fund may be at any time encumbered by the purchase of equipment. Section 5625-26 provides that after the Budget Commission has completed its work and certified its action to the taxing authority, there shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom. Evidently, if it is contemplated to encumber, before the end of the year, the entire balance in the general fund, such balance probably should not be shown at all on the credit side of the general fund, because there would be no "estimated unencumbered balances" in this fund as contemplated in Section 5625-26. In any event this tax budget must be revised before the end of the year so that the actual facts as to what, if any, unencumbered balances may be on hand at the end of the year would be shown, and such revised budget shall be the basis of the annual appropriation measure. Section 5625-27 provides for the certification to the county auditor of the amended official certificate.

In reference to the authority of the Budget Commission to reduce a levy of the taxing authority, your attention is directed to an opinion of my predecessor, appearing in Opinions of the Attorney General, 1927, Vol. III, p. 2398, in which appears a thorough discussion of the powers and duties of the Budget Commission in curtailing or limiting the actions of a subdivision with reference to taxation as contained in the budget law, being Sections 5625-1 to 5625-39, General Code, inclusive. It was held in this opinion that there is no authority conferred on the Budget Commission to designate in what manner, or for what purpose any part of the general fund shall be expended; further, that the function of the Budget Commission is to determine matters of limitation, and when the Budget Commission has reduced and adjusted the amounts to be levied within the fifteen mill limitation and the amount for other purposes, it has exhausted its power. It is noted that, under the provisions of Section 5625-23, General Code, the minimum board of education levy for current expenses, including the levy prescribed by Section 7575, General Code, shall be 4.85 mills unless the board of education requests an amount requiring a lower rate.

In the event a levy may be made within the fifteen mill limitation for the purchase of equipment for a school building and such levy is reduced by the Budget Commission

to a lesser amount than desired by the taxing authority, but not by an amount so as to make such levy less than the minimum amount which may be prescribed by statute, the taxing authority may appeal to the Tax Commission of Ohio, which commission shall consider and have power to modify such action of the Budget Commission, under the provisions of Section 5625-28, General Code.

It is further stated in the letter submitted that of an authorized \$90,000 bond issue, \$78,000 of which was to be used for construction of a schoolhouse, \$10,000 for equipment and \$2,000 for interest, nearly \$88,000 has been used for construction purposes. Section 2293-10, being part of the Uniform Bond Act, provides in part as follows:

"The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class *shall not exceed the amount allotted in said schedule to said class*; provided, however, that whenever the bond issuing authority determines such transfer to be necessary for the carrying out of the purpose of the bond issue, then such authority may transfer any *unexpended* portion of the amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity. * * * "

The authority to transfer a part of the \$10,000 allotted to equipment to the fund of \$78,000 for construction purposes appears to be limited to such part of the amount allotted to equipment as is unexpended. In other words, if it should appear, for instance, that \$5,000 would cover the cost of equipment, there is authority for transferring the remaining \$5,000 in the equipment fund to the construction fund. A situation frequently arises where it appears that although \$10,000 may be needed for equipment, there may be \$5,000 transferred from the equipment fund to the construction fund and at the same time a like amount appropriated out of the general fund to the equipment fund to take care of the transfer. Under such circumstances, I am inclined to the view that no serious question may be raised as to the validity of the award of contract for construction in excess of the amount originally allotted for such purpose. On account of the fact that it appears, in the case presented here, to be necessary to make a levy to reimburse the equipment fund, a very different situation arises. If \$90,000 of bonds are authorized for the purpose of constructing and equipping a school building, pursuant to vote of the electors, I am of the opinion that a board of education has no authority to contract for such building under a plan involving an estimated expenditure for such building and equipment in an amount in excess of that sanctioned by the voters except perhaps in cases when such excess may be met by surplus available funds on hand. The case of *State, ex rel. vs. Andrews*, 105 O. S. 489, is directly in point. The fourth branch of the syllabus is as follows:

"When the voters of a county sanction the policy of building a county jail by voting a bond issue in an amount certain, the policy adopted is one involving the expenditure of no greater sum than that approved, and a building commission is without power to contract for such building under its adopted policy and plan involving an estimated expenditure of an amount in excess of that sanctioned by the voters."

In conclusion, I am of the opinion that:

1. A surplus appearing in the general fund of a school district may be legally used for purchasing needed equipment for a school building.
2. If a board of education has, pursuant to vote of the electors, authorized \$90,000.00 bonds for the purpose of constructing and equipping a school building, such board has no authority to contract for such building under a plan involving an es-

timated expenditure for such building and equipment, in an amount in excess of that sanctioned by the voters, except perhaps in cases when such excess may be met by surplus available funds on hand.

Respectfully,
GILBERT BETTMAN,
Attorney General.

765.

CERTIFICATE OF CORPORATE COMPLIANCE—APPLICATION FOR SUCH MADE PRIOR TO NEW SECURITIES ACT—PROCEEDING PENDING—ISSUANCE FEE UNDER OLD LAW CHARGEABLE.

SYLLABUS:

When an application has been filed for a Certificate of Corporate Compliance in accordance with the provisions of Section 6373-14, General Code, prior to July 21, 1929, such application constitutes a pending proceeding within the meaning of Section 26, General Code, and the fee to be paid by such applicant for such certificate issued subsequent to July 21, 1929, the effective date of Amended Senate Bill No. 12, should be ten dollars, as provided in Section 6373-16, General Code, as in force and effect prior to July 21, 1929.

COLUMBUS, OHIO, August 19, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

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

“Your opinion is respectfully requested on the following matter:

A corporation files all of the necessary papers for certification of its stock under Section 6373-14, prior to July 21, 1929.

The examination referred to in Section 6373-16 is not completed until after July 21, 1929, and the issuance fee of \$10.00 cannot be paid until a date subsequent to July 21, 1929.

The new Securities Act became effective July 21, 1929.

The question on which I desire your opinion is: When Certificate of Corporate Compliance is issued to such corporation subsequent to July 21, 1929, shall the issuance fee be charged under the old law (Section 6373-16) or under the new law?”

Section 26, General Code, provides as follows:

“Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

If the provisions of this section are applicable to the question submitted, there