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BOARD OF EDUCATION — MAY DECLARE EMERGENCY AND PLACE BEFORE ELECTORS AT SPECIAL ELECTION, QUESTION, BOND ISSUE:

1. WHEN SCHOOL BUILDINGS DESTROYED.
 2. BUILDINGS CONDEMNED BY DULY CONSTITUTED PUBLIC AUTHORITY.
 3. WHEN BUILDINGS PARTIALLY CONSTRUCTED, CERTAIN NAMED EXIGENCIES REQUIRE ADDITIONAL FUNDS.
- SECTION 2293-15a G.C. — POWERS AND AUTHORITY GRANTED NOT ENLARGED OR INCREASED WHEN BOARD CONTEMPLATES FEDERAL AID TO BUILD GARAGE, LANDSCAPE GROUNDS AND MANUFACTURE EQUIPMENT BY NATIONAL YOUTH ADMINISTRATION.

SYLLABUS:

A board of education may, by virtue of the power and authority granted in Section 2293-15a, General Code, declare an emergency and place before the electors at a special election the question of issuing bonds, only when (1) school buildings have been destroyed, or (2) have been condemned by duly constituted public authority, or (3) where such buildings are partially constructed, or so constructed or planned as to require additions thereto before being completed and where existing limitations make adequate replacement, additions or improvements impossible. The fact that such a board contemplates procuring federal aid to the extent of building a garage, landscaping grounds and manufacturing certain equipment and fixtures by the National Youth Administration, does not enlarge or increase the powers and authority of a board granted in said Section 2293-15a, General Code.

Columbus, Ohio, March 24, 1941.

Honorable James W. Williamson, Prosecuting Attorney,
Wauseon, Ohio.

Dear Sir:

Your letter of March 11, 1941, requesting my opinion, duly received.
Your request reads:

"The Board of Education of Swancreek Township Rural School District operates at the present time six one-room schools. The board wishes to build a new school building at some centrally located point to accommodate all pupils of the township. They would like your opinion as to whether under this factual situation they can declare an emergency under G.C. Sec. 2293-15a and place before the electors of the district the question of issuing bonds for building the new building at a special election called for that purpose.

In the event that your opinion on the above is negative, the board desires your further opinion as to whether or not the fact that they contemplate procuring federal aid on the project to the extent of the building of a garage, landscaping of grounds and the manufacture of certain equipment and fixtures for the inside of the building by the National Youth Administration, alters their situation.'

In so far as pertinent to your inquiry, Section 2293-15a of the General Code reads as follows:

*"In school districts where school buildings have been destroyed or condemned by duly constituted public authority, or where such buildings are partially constructed or so constructed or planned as to require additions thereto before being completed, and where existing limitations make adequate replacement, additions or improvements impossible as determined by the local board of education, such board may declare an emergency. Upon the declaration of an emergency, the local board of education, in accordance with law, shall place before the electors of the district the question of issuing bonds for the replacement or improvement of, or the addition to school buildings. The form of the ballot shall describe the emergency existing, the authority under which it is declared, and shall state that the bond issue for emergency purposes is beyond the limitations heretofore prescribed by law and that electors are to express their wishes yes or no. If 65 per centum of the electors voting on the question of such bonds vote in favor thereof, the taxing authority of the school district shall have authority to issue such bonds in accordance with the provisions of this section, the uniform bond act of Ohio and the General Code and the debt service levies for such bonds shall be outside of all limitations on the tax rate. * * **" (Emphasis mine.)

It is unnecessary to consider the meaning of the word emergency (defined as "an unforeseen occurrence; a sudden and urgent occasion for action; an exigency" — The New Century Dictionary; Opinion No. 824, Opinions, Attorney General, 1927, Vol. II, p. 1441, 1448; State ex rel. Menning, etc., v. Zangerle, Auditor, 95 O.S. 1, 8) for the very patent

reason that the General Assembly has, in the section above quoted, expressly and specifically provided when and under what conditions a board of education "may declare an emergency." These are:

1. Where "school buildings have been destroyed";
2. Where school buildings have been "condemned by duly constituted public authority"; or
3. Where school buildings "are partially constructed or so constructed or planned as to require additions thereto before being completed."

It seems to me quite plain that the third emergency contemplated by the Legislature (as above set forth) only exists where school buildings are under construction, or have been so started or planned "as to require additions thereto *before being completed.*" According to the facts stated in your letter, no such condition exists. And of course no contention is made that the school buildings desired to be replaced have been either destroyed or lawfully condemned. Your question, therefore, may be narrowed to this:

May a board of education declare an emergency under Section 2293-15a, General Code, in the absence of the existence of any one of the three sets of factual conditions prescribed in such section, and would the mere fact that the board contemplates "procuring federal aid *on the project* (sic) to the extent of the building of a garage, landscaping of grounds and the manufacture of certain equipment and fixtures for the inside of the building by the National Youth Administration" alter the situation?

I have no hesitation in answering your question in the negative.

The courts of this state, from the highest to the lowest, as well as this office, have so repeatedly said that statutory officers, boards and commissions have such powers and only such powers as are expressly granted by statute, together with such implied powers as may be necessary to carry the express powers into effect, that the citation of authority to this effect is unnecessary. This principle of law, of course, applies to boards of education, as will be seen from an examination of the leading case of *State, ex rel. v. Cook, Auditor, 103 O.S. 465 (1921)*, the second branch of the syllabus of the case reading:

“Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (State, ex rel. Locher, Pros. Atty., v. Menning, 95 Ohio St., 97, approved and followed.)”

And, as said in *Village of Elmwood Place v. Schaube, a Taxpayer*, 91 O.S. 354, 357 (1915), it “is equally well settled that where the words of a statute are plain, explicit and unequivocal and express clearly and distinctly the sense of the law-making body, there is no occasion to resort to other means of interpretation.” That is to say, the Legislature having determined in Section 2293-15a, General Code, under what conditions, facts and circumstances an emergency may be declared to exist by a board of education desiring to issue bonds by virtue of the powers and authority granted therein, such a board may not, under the law, by what may be by some called a subterfuge, enlarge or increase the powers and authority so conferred by the law-making body of the State by the mere fact of procuring federal aid on other projects, more or less related to the undertakings actually authorized by virtue of the provisions of Section 2293-15a, *supra*.

Nothing in this opinion should be construed as in anywise passing upon the powers of boards of education to issue bonds under Section 2293-87 et seq., of the General Code, which were enacted in the emergency act of May 31, 1939, 93rd General Assembly, the same act in which Section 2293-15a was passed (118 v. 703; eff. 6-2-39).

In view of the foregoing, and in specific answer to your question, it is my opinion that:

A board of education may, by virtue of the power and authority granted in Section 2293-15a, General Code, declare an emergency and place before the electors at a special election the question of issuing bonds, only when (1) school buildings have been destroyed, or (2) have been condemned by duly constituted public authority, or (3) where such buildings are partially constructed, or so constructed or planned as to require additions thereto before being completed and where existing limitations make adequate replacement, additions or improvements impossible. The fact that such a board contemplates procuring federal aid to the extent of building a garage, landscaping grounds and manufacturing certain equipment and fixtures by the National Youth Administration,

does not enlarge or increase the powers and authority of a board granted in said Section 2293-15a, General Code.

Respectfully,

THOMAS J. HERBERT,

Attorney General.