

543.

BOND ISSUE—ERECTION OF COURT HOUSE—CONSENT OF ELECTORS
WHEN COST EXCEEDS \$25,000.00—WHEN BONDS FOR ALTERING
EXISTING BUILDING MUST BE VOTED UPON—ARCHITECT'S FEES.

SYLLABUS:

1. Under the provisions of Section 2333, General Code, when county commissioners have determined to erect a new court house at a cost in excess of twenty-five thousand dollars, if bonds are to be issued for such purpose, the question of such issuance must be submitted to the electors irrespective of the amount of bonds to be issued.

2. The fact that available funds on hand would reduce the requirement of new funds below twenty-five thousand dollars would have no bearing upon the necessity of complying with the requirements of Section 2333, General Code, as to the submission of such question to a vote of the electors, when such new court house is to cost in excess of twenty-five thousand dollars.

3. In case an existing court house is to be altered, repaired, improved, enlarged or extended, the provisions of Section 2333, General Code, do not apply and such question need only be submitted to the electors if bonds are to be issued for such purpose in an amount which will cause the aggregate unvoted bonds issued within a period of five years, as set forth in Section 2293-16, to exceed twenty thousand dollars.

4. Architects' fees for preliminary plans, drawings and sketches as may be necessary for the purpose of enabling a board of county commissioners to adopt a definite plan for the construction, alteration or repair of a court house, should be paid out of the general fund and are not a part of the cost of such construction, alteration or repair.

5. Architects' fees for the preparation of working plans and specifications and for other services in connection with the construction, alteration or repair of a court house after it is determined to proceed with such improvement, are part of the cost of such improvement.

COLUMBUS, OHIO, June 19, 1929.

HON. DON. W. MYERS, *Prosecuting Attorney, Elyria, Ohio.*

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

“Would you please furnish me with an opinion concerning the law applicable to the following propositions:

1. May the board of county commissioners expend in excess of \$25,000.00 for the construction of a new court house or the alteration or repair of an existing court house without submitting such question to the electors of the county?

2. Would the fact that available funds on hand would reduce the requirement of new funds below \$25,000.00 render it unnecessary to submit the question to a vote assuming that the total cost of the improvement or repair is in excess of \$25,000.00?

3. Is the commission of the architect, including that for preliminary plans, a part of the cost of the building?”

County commissioners are authorized to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house under the provisions of Section 2433 of the General Code, being part of the Uniform Bond Act, 112 O. L. 381.

Section 2293-16 of this act, 112 O. L. 371-372, prescribes the limitations of indebtedness that may be created or incurred by a county with or without a vote of the electors. This section contains the following proviso:

“Provided that, except by vote of the electors, bonds shall not be issued by any county in an amount exceeding twenty thousand dollars in any period of five years, for the acquisition, construction, improvement, enlargement or extension of any one county building, including the acquisition, of a site therefor, but this limitation shall not apply to buildings for a district consisting of two or more counties.”

This limitation is not to the actual cost of any one county building, but to the amount of bonded indebtedness which may be incurred in connection with either the construction or alteration of such building without a vote of the electors. In the absence, therefore, of any other provisions of law, it would appear that in case a court house were sought to be constructed or altered or enlarged at a cost in excess of \$20,000.00 and sufficient funds were available so that bonds need be authorized in an amount which would not cause the aggregate unvoted bonds issued within a period of five years, as set forth in this section, to exceed \$20,000.00, then there would be no necessity for submitting the question of such authorization to the electors.

Your letter, however, presumably refers to the provisions of Section 2333, General Code, which section is as follows:

“When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners shall apply to the judge of a court of common pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party.”

This section was not repealed by the Uniform Bond Act and, as held by my predecessor, the enactment of the Uniform Bond Act did not effect a repeal of this section by implication. Opinion No. 3055, rendered to the Bureau of Inspection and Supervision of Public Offices, under date of December 21, 1928. In this opinion, the following language is used:

“There is no plain intention to remove from the authority, therein conferred upon the taxing authority, the restrictions imposed by Section 2333, requiring submission of the question of issuing of bonds for the improvement to the electors and the creation of a building commission.

In fact in the same act, in immediately succeeding sections, the Legislature re-enacted provisions authorizing county commissioners to purchase, contract, etc., county hospitals and retained the provision for the appointment of trustees by the Governor to discharge the functions of a building commission in such cases. The continuance of such a provision relating to county hospitals certainly precludes any presumption of an intention to repeal by implication the similar provision contained in Section 2333, General Code, relating generally to county buildings.”

It is noted that the wording of Section 2333 is different from that of Section 2293-16 herein quoted. The limitation in Section 2293-16 has to do with the incurring

of a debt as hereinabove commented upon, but Section 2333 expressly provides that when the county commissioners have determined to erect a court house at a cost exceeding \$25,000.00, they shall submit the question of issuing bonds to a vote of the electors. There is no provision here to the effect that if bonds are to be issued in an amount to exceed \$25,000.00 for the purpose of erecting a court house, the question shall be submitted to the electors, but on the contrary, if a court house is to be erected to cost more than \$25,000.00, the question of issuing bonds for such purpose shall be submitted to the electors and there is nothing said as to the amount of bonds which may, in a particular instance, be necessary in order to provide funds for such purpose.

In an opinion of this department, found in Annual Report of Attorney General, 1912, Vol. I, p. 194, Section 2333 was under consideration. It was held that a vote of the electors was indispensable in the event a county jail was to be erected to cost more than twenty-five thousand dollars, notwithstanding the fact that no bonds were to be issued for such purpose. The opinion was predicated upon Section 5638, General Code, which then provided that county commissioners shall not "appropriate money for the purpose of building county buildings, the expense of which will exceed \$15,000, without first submitting to the voters of the county the question as to the policy of making such expenditure." The succeeding sections provided the detailed machinery whereby this question of policy could be submitted.

All of these sections were repealed by the 87th General Assembly at the time of the enactment of the Uniform Bond Act. There is, accordingly, no machinery now in existence for the submission to the voters of the county of any question of the policy of expenditure. The only existing machinery for such submission is where bonds are to be issued and this procedure is outlined in the Uniform Bond Act. If the electors are only to pass upon the question where bonds are to be issued, no difficulty is encountered. I feel accordingly that the section as it now stands should be construed as requiring the submission to a vote of the electors of any bond issue, no matter what the size, provided the county commissioners are proposing to use the proceeds thereof in the construction of a court house, the total expenditures upon which will exceed \$25,000.00.

Your attention is particularly directed to the fact that this section, 2333, refers only to the erection of a court house or other county building. There is no reference herein to the alteration, repair, enlargement or extension of such building. It would appear, therefore, that if the present court house is only to be altered or repaired, there is here no necessity of submitting the question to a vote of the electors, unless bonds are to be issued in an amount which will cause the aggregate unvoted bonds issued within a period of five years, as set forth in Section 2293-16, to exceed twenty thousand dollars.

The next question raised in your letter has to do with whether or not architect's fees, including those for preliminary plans, are part of the cost of the building.

The question of architects' fees has been heretofore considered in opinions of this office, in which fees for such preliminary plans have been distinguished from those in connection with the preparation of working plans and specifications and additional service in connection with the construction of an improvement. In an opinion of this office, found in Opinions of the Attorney General, 1916, Vol. I, p. 360, the first part of the syllabus is as follows:

"The compensation of a building commission as provided by Section 2334, General Code, and all architects and other employees employed by said commission, under provisions of Section 2339, G. C., is payable from the building fund."

In the body of the opinion, the following language is used:

"I therefore hold that the expenses named in Section 2335, supra, which are incurred prior to the sale of bonds may be paid from the general county fund, but as to all other bills, claims, estimates and expenses, including the services of the architect, allowed and ordered paid by the commission, it is manifestly the intention of the law that such be paid from the building fund."

In an opinion of my predecessor, found in Opinions of the Attorney General, 1927, Vol. IV, p. 2550, the syllabus is as follows :

"1. Under the provisions of Section 2343, General Code, the board of county commissioners of a county is authorized to employ an architect for the purpose of making such preliminary plans, drawings and sketches as may be necessary for the purpose of enabling such board to adopt a definite plan for the erection or construction of a county building or building improvement, and for the purpose of enabling said board to determine the required amount of a proposed bond issue for constructing such building or building improvement.

2. The compensation of such architect should be paid out of the general county fund, after appropriation covering such contract of employment and expenditure for such services is made."

Specifically answering your questions, I am of the opinion that :

1. Under the provisions of Section 2333, General Code, when county commissioners have determined to erect a new court house at a cost in excess of twenty-five thousand dollars, if bonds are to be issued for such purpose, the question of such issuance must be submitted to the electors irrespective of the amount of bonds so to be issued.

2. The fact that available funds on hand would reduce the requirement of new funds below \$25,000.00 would have no bearing upon the necessity of complying with the requirements of Section 2333, General Code, as to the submission of such question to a vote of the electors, when such new court house is to cost in excess of \$25,000.00.

3. In case an existing court house is to be altered, repaired, improved, enlarged or extended, the provisions of Section 2333, General Code, do not apply and such question need only be submitted to the electors if bonds are to be issued for such purpose in an amount which will cause the aggregate unvoted bonds issued within a period of five years, as set forth in Section 2293-16, to exceed twenty thousand dollars.

4. Architects' fees for preliminary plans, drawings and sketches as may be necessary for the purpose of enabling a board of county commissioners to adopt a definite plan for the construction, alteration or repair of a court house, should be paid out of the general fund and are not a part of the cost of such construction, alteration or repair.

5. Architects' fees for the preparation of working plans and specifications and for other services in connection with the construction, alteration or repair of a court house, after it is determined to proceed with such improvement, are part of the cost of such improvement.

Respectfully,
GILBERT BETTMAN,
Attorney General.