

1103

TOWN HALL—ELECTORS OF TOWNSHIP—VOTE—NECESSARY BEFORE TOWN HALL CAN BE BUILT WHERE COST WILL EXCEED TWO THOUSAND DOLLARS—FUNDS COME FROM PERMANENT IMPROVEMENT FUND NOT TOWNSHIP GENERAL FUND.

**SYLLABUS:**

A vote of the electors of a township is necessary before a town hall, the cost of which will exceed two thousand dollars, can be built. This vote is necessary even though the funds to be used come from a permanent improvement fund and not the general fund of a township.

Columbus, Ohio, October 13, 1949

Hon. Glenn L. Fortune, Prosecuting Attorney  
Carroll County, Carrollton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I would appreciate your opinion in regard to the following question which has been requested by the Board of Trustees of Brown Township, Carroll County, Ohio.

"Under date of Feb. 17, 1944, said Board of Trustees was granted authority by the Bureau of Inspection and Supervision of Public Offices under authority of Section 5625-11, General Code, to establish a permanent improvement fund for the purpose therein set forth; a resolution of said Board dated Feb. 5, 1944, set forth the purpose which was to erect an office building for the use of Brown Township.

"Pursuant to said resolution, said fund was established and there is now in said fund the sum of \$7,000.00, which sum is amply sufficient for the construction of said building.

"Under date of June 25, 1949, the Clerk of said Board of Trustees is now advised by letter from the Bureau of Inspection and Supervision of Public Offices, that they are without authority to construct said building without submitting the question to the electors of the Township since the cost thereof will exceed \$2,000.00.

"I am aware of the provisions of Section 3395 of the General Code with respect to submitting a question to the electors of the Township when the Trustees desire to build a Town Hall.

"I am also aware of the opinion from your office No. 2404 of the year 1934 which ruling holds that a Township Hall can not be built at a cost exceeding \$2,000.00 without submitting the question to the electors of the Township, even though there are sufficient funds in the general fund to pay such costs.

"However, in this case the funds are not in the General Fund of the Township, but in a special improvement fund which has been duly and legally established for this particular purpose.

"Would you please advise me whether or not under these circumstances it is necessary to have a vote of the electors of the Township before the Trustees can proceed to use the money from the permanent improvement fund for the purpose of constructing a Township building."

Section 5625-11, General Code, states as follows:

"In addition to the funds provided for by sections 5625-9 and 5625-12 of the General Code, the taxing authority of a subdivision may establish, with the approval of the bureau, such other funds as may be necessary and desirable, and may provide by ordinance or resolution that moneys derived from specified sources other than the general property tax shall be paid directly into such funds."

Section 3295, General Code, reads as follows:

"The trustees of any township in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish and equip a township hall, a township park, bridges and viaducts over streets, streams, railroads or other places where an overhead roadway or footway is necessary, and sites for any of the same."

Section 3260, General Code, reads as follows:

"The trustees shall fix the place of holding elections within their township, or of any election precinct thereof. For such purpose they may purchase or lease a house and suitable grounds, or by permanent lease or otherwise acquire a site, and erect thereon a house. If a majority of the electors of the township or a precinct thereof, voting at any general election, vote in favor thereof, the trustees may purchase a site and erect thereon a town hall for such township or precinct and levy a tax on the taxable property within such township or precinct to pay the cost thereof, which shall not exceed two thousand dollars. At least thirty days notice shall be given in at least five of the most public places in the township or precinct, that at such election a vote will be taken for or against a tax for such purchase."

In Opinion No. 330, Opinions of the Attorney General for 1929, page 517, the syllabus states as follows:

“For the purpose of constructing a township hall, township trustees are authorized to expend a sum not exceeding two thousand dollars from the general township fund without a vote of the electors; such township trustees may not, however, incur any indebtedness for such purpose unless authorized by vote of the electors under the provisions of Section 2293-17, General Code.”

Thus, if the cost exceeds two thousand dollars, then Section 3395, et seq., General Code, apply. Section 3395, General Code, reads as follows:

“If in a township, it is desired to build, remove, improve or enlarge a town hall, at a greater cost than is otherwise authorized by law, the trustees may submit the question to the electors of the township, and shall cause the clerk to give notice thereof and of the estimated cost, by written notices, posted in not less than three public places within the township, at least ten days before election.”

The word “may” here must be construed to be a mandatory word. In 37 O. Jur. 328, is found the following:

“The word ‘may,’ under proper circumstances, may be interpreted to impose an imperative obligation. This is particularly true where the statute confers authority to perform an act the performance of which the public interest demands—that is, in cases where the public are interested, or where a matter of public policy, and not merely of private right, is involved, or where the statute directs the doing of a thing for the sake of justice or the public good. \* \* \* It is only so interpreted where such construction is necessary to give effect to the clear policy and intention of the legislature—that is, where the legislature means to impose a positive and absolute duty. The word ‘may’ will not be given the meaning of ‘shall’ or ‘must’ where it is apparent from the whole section or statute that such was not the legislative intention. Whether it is to be so read depends upon a fair construction of the statute.”

The word “may” in this statute was considered mandatory in Opinion 2404, Opinions of the Attorney General for 1934, page 341. In this opinion, the first branch of the syllabus reads as follows:

“A township hall cannot be built, removed, improved or enlarged at a cost to the township greater than two thousand dollars without submitting the question to the electors of the township,

even though there are sufficient unencumbered funds in the general fund of the township to pay such entire cost."

The purpose of Section 3395, General Code, is to give to the electors the opportunity to decide if they desire to build a town hall which would cost over two thousand dollars. That is, the question of the *advisability* of building such a building was intended to be in the hands of the people and not exclusively within the power of the township trustees. This intent is evidenced in Opinion No. 2404, 1934 Opinions of the Attorney General, *supra*, wherein it is stated at page 342:

"The question submitted to the electors under these sections is purely a question of policy of making the improvement, and, in my opinion, must be submitted where the cost to the township of the improvement exceeds two thousand dollars, even though there is sufficient money in the treasury to pay the entire cost.  
\* \* \*"

From the above I believe that the statutes were adopted for the purpose of preventing public moneys from being expended without the electors having a direct voice in the matter. Even though Section 5625-11, General Code, provides for a special fund, the statutes protecting the people from promiscuous expenditure of public funds can not be circumvented. A contrary conclusion would permit such expenditures to be made even against the will of the electors.

In conclusion, therefore, it is my opinion that a vote of the electors of a township is necessary before a town hall, the cost of which will exceed two thousand dollars, can be built. This vote is necessary even though the funds to be used come from a permanent improvement fund and not the general fund of a township.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.