

support or benefit of the beneficiary being ignored. While this power to invade the principal generally is to be ignored, however, it seems that the funeral expenses are a charge on the fund. The charge appears to be a direct one, rather than merely a power in the trustee. It is the opinion of this department, therefore, that the present worth of a reasonable sum for funeral expenses of the life tenant, computed on the basis of his expectancy of life, should be subtracted from the contingent remainder. This amount should be added to the taxable value otherwise ascertained of the equitable life estate, inasmuch as it is a benefit to the estate of the life tenant.

The remainders are contingent. One possibility is that the beneficiary will leave legitimate issue. In that event, of course, his issue so left would be a direct descendant of the testator, as the beneficiary is the testator's son. But it is also possible, and may be very probable, that the beneficiary will not leave legitimate issue, in which event the contingent remainder is to vest in the next of kin of the testator. A possibility here by no means remote is that the next of kin of the testator may turn out to be a person so distantly related to the testator as to bring the whole remainder within the seven per cent class.

Without repeating the reasoning which has been expressed in previous opinions of this department, the conclusion of the department is that the contingent remainder should be immediately taxed at the seven per cent rate in accordance with section 5343 of the General Code. The case does not appear to be one for postponement of the accrual of the tax under section 5336 of the General Code, it appearing that "the actual market value" of the contingent remainder as a whole can "be ascertained at the time of" the death of the testator, such ascertainment being made by appraising the life interest on the basis commanded by section 5342 of the General Code and the charge on account of the funeral expenses in the manner suggested herein.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1998.

BOARD OF EDUCATION—UNDER PROVISIONS OF SECTION 7625 G. C. RESOLUTION MUST STATE PURPOSE FOR WHICH BOND ISSUE SUBMITTED—HOW PROCEEDS EXPENDED—WHERE RESOLUTION PROVIDES FOR PURCHASE OF LAND TO ERECT SCHOOL BUILDING—CANNOT PURCHASE TWO SITES AND ERECT TWO BUILDINGS—WHERE RESOLUTION MAKES NO MENTION OF REPAIRING SCHOOL BUILDING—MONEYS CANNOT PROPERLY BE USED FOR SAID PURPOSE.

1. *Under the provisions of section 7625 G. C. the board of education in its resolution must state the purpose for which a bond issue is to be submitted. The proceeds arising from such a bond issue must be expended strictly in accord with the provisions of such resolution.*

2. *Where the resolution provides that it is for the purpose of purchasing land to erect a school building, it cannot be construed to authorize the purchase of two sites and the erection of two school buildings.*

3. *Where the resolution makes no mention of repairing or building an addition to an existing schoolhouse, moneys arising from such bond issue cannot properly be used for said purpose.*

COLUMBUS, OHIO, April 13, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—In your recent communication you submit certain interrogatories upon facts which, gathered from your letter together with your enclosures consisting of copies of correspondence between the city solicitor of Alliance and the clerk of the board of education of said city, may be stated as follows:

“The board of education of the Alliance city school district adopted the following resolution:

Whereas: The board of education of Alliance city school district, Stark and Mahoning counties, Ohio, believe it to be necessary for the proper accommodation of the schools of said district, that additional land be purchased and a school building erected in the southeast part of the city and that it will require \$200,000 to make said improvements, and that the funds at the disposal of said board or that can be raised under sections 7629 and 7630 of the General Code of Ohio, are not sufficient to accomplish said purpose, and that a bond issue is necessary.

Now therefore be it resolved that an election be held in said school district on the question of issuing bonds in an amount of \$200,000 for the purpose herein specified, on the 27th day of April, 1920, and that the clerk of said board of education be and is hereby directed to forward a copy of this resolution to the deputy state supervisors of elections of Stark and Mahoning counties, Ohio, and request the said supervisors to provide election supplies and conduct said election and that the clerk of said board of education is also directed to publish notice of said election as provided by law.”

Your queries in reference to said resolution are as follows:

“(1) Will an addition to an existing school building in the southeastern section of the city be in accordance with the resolution for bonds?

(2) Can the board of education purchase land at two different places in this section of the city, to be paid for out of the proceeds of this bond issue, in accordance with a resolution for bonds?

(3) Could two buildings be erected in this section, to be paid for from the proceeds of this bond issue, in accordance with the resolution for bonds?”

Undoubtedly, the action taken by the board of education was in pursuance of the provisions of section 7625 G. C., which provides:

“When the board of education of any school district determines that for the proper accommodation of the schools of such district it is necessary to purchase a site or sites to erect a schoolhouse or houses, to complete a partially built schoolhouse, to enlarge, repair or furnish a schoolhouse, or to purchase real estate for playground for children, or to do any or all of such things, that the funds at its disposal or that can be raised under the provisions of sections seventy-six hundred and twenty-nine and seventy-six hundred and thirty, are not sufficient to accomplish the purpose and that a

bond issue is necessary, the board shall make an estimate of the probable amount of money required for such purpose or purposes and at a general election or special election called for that purpose, submit to the electors of the district the question of the issuing of bonds for the amount so estimated. Notices of the election required herein shall be given in the manner provided by law for school elections."

In connection with the provisions of the above section it is appropriate to consider section 5654 G. C., which is as follows:

"The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

Keeping in view the fact that moneys acquired by a special bond issue must be expended for the purpose for which the issue was made, and that the courts have decreed that a strict construction should be given to the statutes governing the same, it is evident that the language of the resolution providing for the submission of the bond proposal must disclose the purpose for which the bond issue was made in the light of the statute authorizing the same.

It will be observed that section 7625, *supra*, authorizes the submission of such bond issue when the board of education determines that the proper accommodation of the schools renders such action necessary to accomplish any of the purposes enumerated therein. Among said specified purposes is "to purchase a site or sites to erect a schoolhouse or houses." It is believed that the legislature in the use of the words "site" and "schoolhouse" in the singular and further the use of the plural form following the word "or" is significant in determining the legislative intent.

It seems clear that it was contemplated that there would be times when one site only would be desired, and at other times perhaps more than one would be needed. Likewise, it was foreseen that at times the needs of the schools would require the erection of one schoolhouse and at other times more than one would be required. Furthermore, it would seem to be consistent with the legislative intent to say that it was contemplated that there would be occasions when only the repair or improvement of a building would be necessary and at other times only a playground required. In other words, the statute provides a means whereby the board of education, with the approval of the electors of the district, may make a levy beyond the limitations otherwise provided by law, and purports to set out the purposes for which such levy may be made. The resolution must necessarily determine this purpose, and the expenditure must be kept strictly within the purpose provided by the resolution.

An analysis of the resolution under consideration discloses that the board found it necessary "that additional land be purchased and a school building erected in the southeast part of the city and that it will require \$200,000 to make said improvements" in connection with other determinations relating to jurisdictional matters.

It seems clear from the resolution that it was the intent of the board of education to purchase land for the purpose of a site upon which to erect a proposed "school building." Nowhere in the resolution does it appear that it was contemplated to erect more than one building.