

the proceedings for its improvement and therefore cannot be implied from the express powers granted therein.

I do not express an opinion on the question of whether it is the duty of the board of township trustees to maintain and keep in good repair unused portions of township roads resulting from the proceedings, under Section 3298-1, General Code, supra, if not vacated pursuant to law, as this question is not raised by your communication. This question, however, is closely allied to your inquiry and I include herein a brief citation of the law dealing therewith. Section 3370, General Code, provides in part as follows:

“The township trustees shall have control of the township roads of their township and shall keep the same in good repair. \* \* \* ”

Section 3298-17, General Code, provides:

“Each board of township trustees shall be liable in its official capacity for damages received by any person, firm or corporation by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties.”

In *McQuigg et al vs. Cullins*, 56 O. S. 649, the township board of trustees was enjoined from closing a road which had been vacated under authority of Section 4683, Revised Statutes, Section 6972, Page and Adams General Code, then in effect. The court there held that the vacation of the road had the effect to relieve the public from any duty to keep such road in repair.

It would seem a reasonable and proper precaution for the board of township trustees to arrange to secure the vacation of unused portions of township roads resulting from its proceedings under Section 3298-1, General Code, agreeable to the provisions of the General Code hereafter cited. Section 6860, General Code, 112 O. L. 484, effective January 2, 1928, grants to county commissioners the power to vacate all roads within the county as provided therein and in the succeeding sections. Sections 6862, General Code, 112 O. L. 484, et seq. specify the manner and the mode of procedure by which this power shall be exercised.

In specific answer to your question, I am of the opinion that a board of township trustees has no authority, express or implied, to abandon or vacate a township road or portion thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1759.

BOND ISSUE—QUESTION MUST BE SUBMITTED TO ELECTORS AT  
NOVEMBER ELECTION—EXCEPTION.

**SYLLABUS:**

*Section 2293-22, General Code, prohibits submitting to the electors of a subdivision at a primary or special election the question of issuing bonds for any purpose other than for rebuilding or repairing public property wholly or partially destroyed by fire or other casualty, or for building a new similar property in lieu of repairing or rebuilding such property.*

COLUMBUS, OHIO, April 10, 1930.

HON. G. O. MCGONAGLE, *Prosecuting Attorney, McConnelsville, Ohio.*

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

“A four-room school building in the Village of Deavertown, York Township Rural School District, Morgan County, Ohio, was destroyed by fire last December. It is necessary, therefore, to meet the requirements of the district that a new building be erected at that place.

At Rose Farm, another village in York Township Rural School District, is a two-story frame school building in which school is now being held. This building ought to be razed and a new building erected in its place.

Could the board of education of this district legally submit the question of issuing bonds for *both* purposes at a special election this spring? Or must such election be deferred until the regular election in November?”

Section 2293-19, General Code, being part of the Uniform Bond Act, provides that the taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue. The section further provides that when such subdivision desires or is required by law to submit any bond issue to the electors, it shall pass a resolution declaring the necessity of such bond issue, fixing the purpose thereof. Section 2293-20, General Code, provides in part as follows:

“The resolution provided for in the foregoing section shall relate only to one purpose. ‘One purpose’ shall be construed to include \* \* \* in the case of a school district any number of school buildings; and in any case all expenditures, including the acquisition of a site and purchase of equipment, for any one utility, building or other structure, or group of buildings or structures for the same general purpose, \* \* \*.”

Insofar as these two sections are concerned, there is no doubt but that a board of education may pass a resolution declaring the necessity of the issuance of bonds for the purpose of rebuilding a school house destroyed by fire and for the purpose of constructing another school building in the district, and submit the question to the electors.

Section 2293-22, however, provides as follows:

“The question of issuing bonds shall always be submitted to popular vote at a November election, except that, whenever it is necessary to rebuild or repair public property, wholly or partially destroyed by fire or other casualty or to build a new similar property in lieu of repairing or rebuilding such property, with the consent of the tax commission of Ohio the question of issuing such bonds may be submitted to popular vote at a primary election or at a special election called for that purpose. The tax commission shall consent to such submission only if they find that the submission of such question at a primary or special election is absolutely necessary to meet the requirements of the people of said subdivision.”

It is manifest that this last quoted section requires that the question of issuing bonds shall always be submitted to the electors at the November election. There is one exception to this requirement, viz. whenever it is necessary to rebuild or repair public property destroyed by fire or other casualty or to build a new similar property in lieu of repairing or rebuilding such property, with the consent of the tax commission.

As therein provided "The question of issuing *such* bonds may be submitted at a primary or special election called for that purpose." (Italics the writer's.) It is observed that in the event a building has been destroyed by fire as in the case which you present, this section does not contain authority for submitting the question of issuing any bonds at other than the November election, but specifically provides that the question of issuing *such* bonds may be so submitted. The word "such" in my view refers only to bonds which may be issued for the purpose of rebuilding or repairing property destroyed by fire or other casualty or for the purpose of building new similar property to take the place of property so destroyed. There is no authority for the submission of the question of issuing bonds for any other purpose. The extent to which the legislature has limited the matter of submitting questions of bond issues at other than the November election is further indicated by the fact that even in case a public building has been destroyed by fire or other casualty, the tax commission may not consent to the submission of the question of issuing bonds for the purpose of repairing or replacing such property unless they find that the submission of such question at a primary or special election is absolutely necessary to meet the requirements of the people of the subdivision.

In view of the foregoing, it is my opinion that Section 2293-22, General Code, prohibits submitting to the electors of a subdivision at a primary or special election the question of issuing bonds for any purpose other than for rebuilding or repairing public property wholly or partially destroyed by fire or other casualty, or for building a new similar property in lieu of repairing or rebuilding such property.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

1760.

APPROVAL, FORM OF COOPERATIVE CONTRACT.

COLUMBUS, OHIO, April 10, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of a communication from the Sales Division of your department submitting two forms of cooperative contract between a municipality and your department, designated as "Exhibit A" and "Exhibit B," respectively. It is assumed that you submit said contract forms by reason of the provisions of Section 1189-2 of the General Code, which provides the manner in which a municipal corporation may cooperate with a director of highways in the construction, reconstruction, improvement, widening, maintenance and repair of public highways. Without undertaking to set forth the many details of said section, among other things, it provides:

"\* \* \* The form of such contract shall be prescribed by the Attorney General and all such contracts shall be submitted to the Attorney General and approved by him before the director shall be authorized to advertise for bids. \* \* \*"

After consideration and in pursuance of the provisions of Section 1189-2, General Code, hereinbefore referred to, the Attorney General hereby prescribes the form enclosed, which is designated as "Exhibit A."

Respectfully,

GILBERT BETTMAN,

*Attorney General.*