

BOARD OF EDUCATION—AFTER JANUARY, 1, 1924 CANNOT BORROW MONEY UNDER PROVISIONS OF SECTION 5655 G. C.

SYLLABUS:

Under the provisions of section 5655 General Code, as amended by the 85th General Assembly in House Bill 599, a board of education, after January 1, 1924, can no longer borrow money under the provisions of this section. The funds due to a board of education on the August settlement, 1923, should be collected at once so as to obviate any necessity for borrowing.

COLUMBUS, OHIO, December 1, 1923.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—A recent communication from your department is received, in which you submit the following inquiry:

“A board of education has not received all of the funds that it is eligible to receive from August, 1923, settlement with the county auditor. May such board of education borrow money in anticipation of the funds still to be paid to it in completing this settlement?”

May a board of education, in accordance with the provisions of section 5655 G. C., borrow money in 1924 and in any year thereafter, as long as this section is not amended or repealed, in anticipation of the funds to be received at the February settlement with the county auditor?”

Your questions necessitate an examination of section 5655 General Code, as amended by the 85th General Assembly in House Bill 599. As thus amended, said section reads as follows:

“*Section 5655:* In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. Provided that after January 1, 1924, no board of education shall borrow money in anticipation of the funds to be received at, or in advance of, the August settlement with the county auditor.”

The latter part of this section clearly prohibits boards of education, after January 1, 1924, from borrowing in anticipation of the funds to be received at or in advance of the August settlement with the county auditor. It is believed under this provision borrowing of funds by a board of education in anticipation of the so-called February settlement would be borrowing in anticipation of funds to be received in advance of the August settlement with the county auditor.

Therefore it is believed that after January 1, 1924, boards of education can no longer borrow money under the provisions of this section.

With reference to funds due to a board of education from the August settlement, 1923, such funds should be collected at once so as to obviate any necessity for borrowing.

Respectfully,
C. C. CRABBE,
Attorney-General.

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OFFICES COMPATIBLE—CLERK OF COUNCIL MAY BE APPOINTED ASSISTANT CITY SOLICITOR.

SYLLABUS:

The clerk of council may be appointed assistant city solicitor to act as prosecutor and receive the compensation fixed for each position.

COLUMBUS, OHIO, December 1, 1923.

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

GENTLEMEN:—This will acknowledge receipt of your letter of October 20, 1923 reading as follows:

“Section 3803 G. C., provides in part:

‘No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. * * *’

“Section 4213 G. C., provides that:

‘The salary of any officer, clerk or employe shall not be increased or diminished during the term for which he was elected or appointed, and except as otherwise provided in this title, all fees pertaining to any office shall be paid into the city treasury.’”

“Question: In view of the above provisions, could the clerk of council also be appointed as assistant city solicitor for the purpose of enforcing the prohibition laws, and legally receive compensation for such additional services in addition to his salary as clerk of council?”

The rule of incompatibility in office is stated by Dustin, J., in the case of *State v. Gebert*, 12 Ohio Cir. Ct., (N. S.) 274, on page 275 of the report, where he says:

“Offices are incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both.”

In the case you present, it is physically possible for one person to perform the duties of both offices. In Vol. I, page 353, of the 1912 Opinions of the Attorney General, we find the following: