

4510.

BOND ISSUE—WHERE PROJECT ABANDONED PROCEEDS MAY BE TRANSFERRED TO BOND RETIREMENT OR SINKING FUND—PRINCIPAL AND INTEREST SET FORTH IN ANNUAL BUDGET.

SYLLABUS:

1. *Proceeds of a bond issue may be used only for the purpose for which the bonds were authorized, except that in the event of the abandonment of the project after the sale of bonds, such proceeds are properly transferable to the bond retirement or the sinking fund.*

2. *When a sufficient amount is held in the sinking fund to the credit of a specific bond fund to meet the interest and principal obligations upon such specific bond issue in any given year, a tax need not be levied for such year to meet the principal and interest requirements of said bond issue, but the amount of such principal and interest requirements must be set forth in the annual budget of the subdivision.*

3. *After abandonment of a project for which bonds have been sold and the proceeds transferred to the sinking fund of a subdivision, such funds may not be transferred back to a construction fund.*

COLUMBUS, OHIO, July 22, 1932.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent request for my opinion upon a number of questions which have been submitted by one of the boards of education of your county. Attached to your letter is the following statement of facts:

“On April 1st, 1932, pursuant to a proper election bonds were sold by the Perkins School District.

The original resolution and the bonds stated the purpose to be ‘constructing a centralized school and the purchase of land therefor.’

The original issue consisted of one hundred and sixty bonds of \$1,000 each, bearing six percent interest.

One hundred and sixteen bonds were sold for the net price of \$114,500. After the bonds were sold the district voted to de-centralize and the school was never built.

The money was placed in the hands of a sinking fund commission and since that time forty-six thousand five hundred dollars of the bonds have been paid by the process of taking the proceeds of the municipal bonds when they became due and getting a check from the county for the difference and thus paying the bonds.

This has cost the county about one thousand dollars a year. No tax has ever been levied to pay any part of the bonds. There remained about seventy thousand dollars of school bonds unpaid with about sixty-one thousand of municipal bonds as collateral.”

Attached to the foregoing statement of facts are the following questions:

“First: Can the district bonds be used for any purpose except building a centralized school?

Second: Can the municipal bonds purchased be used to pay the district bonds?

Third: Are the members of the former school board liable for the money diverted from the fund for building a centralized school?

Fourth: Are the members of the old board liable for using the proceeds of the municipal bonds to pay the district bonds?

Fifth: The present board wish to know if they are not required to levy a tax to pay the bonds?

Sixth: If the board desire to build a school building for a centralized school, what is the proper procedure to obtain possession of the municipal bonds now in possession of the sinking fund commission?"

In response to my request for additional information, I am advised that the bonds of the district were sold April 1, 1921. I presume, therefore, proceedings leading up to their issuance and sale became pending within the year preceding the date of sale. I am further advised that in the year 1922 or 1923 the district voted to decentralize. I have been unable to learn whether or not the municipal bonds referred to were purchased by the sinking fund after the district had so voted. The information supplied contains the statement that in 1922 or 1923 the district voted to decentralize and in 1922 or 1923 these municipal bonds were purchased. I assume that the proceeds of the sale of the bonds were transferred from the improvement fund to the sinking fund and the municipal bonds purchased after the district had voted to decentralize.

The statutory provisions with respect to the disposition of moneys on hand from the sale of bonds during the years 1922 and 1923 were contained in the then provisions of Section 5654, General Code, which section provided 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."

The foregoing section expressly provided that when there was in the treasury of any school district a surplus of the proceeds of a bond issue which was not needed for the purpose for which the bonds were issued, all of such surplus should be transferred to the sinking fund.

In answering your first question, consideration must be given to the authority of a board of education to abandon an improvement project. The power of public corporations to abandon such projects is generally recognized. In *McQuillin on Municipal Corporations*, Second Edition, Vol. 5, p. 178, the discussion with respect to this power being vested in municipal corporation is, I believe, equally applicable to school districts which, under the Ohio law, are bodies politic and corporate. The language of the text is as follows:

"Unless restricted, public improvements proposed or begun may be discontinued, suspended or abandoned by the municipal corporation, and the council, when vested with the discretion to make improvements, may lawfully rescind any action taken by it or its agents unless other parties have acquired thereby valid and enforceable contract rights. As mentioned elsewhere usually the municipal corporation is the sole judge as to whether certain improvements should be made, and if it orders such improvements to be made it may lawfully abandon them and all proceedings relating thereto, provided such step is seasonably taken. If municipal authorities have power under the law to discontinue any improvement proceeding the courts will not interfere unless in its exercise some constitutional rights are invaded."

These principles have been recognized in Ohio. The syllabus of the case of *City of Toledo vs. Michael Jacobson*, 11 O. C. C. 220, reads:

"When a city after having passed an ordinance to re-grade a street goes into court to have awarded the damages to abutting property owners who have filed claims under Sec. 2317, Rev. Stats., and after such proceeding the city fails to pay the damages awarded and to enter into the improvement for six months, the city shall be held to have abandoned such improvement, and the property owners, who were defendants under the proceeding in court, may, under sec. 2260, Rev. Stats., make a motion in the court to retax the costs in the case, together with their reasonable attorney fees and their other reasonable and proper expenses incurred in such proceeding, to be collected by execution or otherwise from the city."

Under the circumstances, I think there is no doubt but that upon the district having voted to decentralize, the transfer of the proceeds of the bond issue to the sinking fund clearly constituted an abandonment of the project by the board of education and such transfer was authorized by the then provisions of Section 5654, *supra*.

Specifically answering your first question, it is my opinion that the proceeds of bonds sold in the year 1921 were properly transferable to the sinking fund upon the abandonment of the improvement project for which such bonds were authorized and sold in accordance with the then provisions of Section 5654, General Code.

Considering your second question, your attention is directed to Section 7615, General Code, as last amended in 98 Ohio Laws 45. This section is dispositive of your second question. It reads as follows:

"The board of commissioners of the sinking fund shall invest that fund in bonds of the United States, of the state of Ohio, of any municipal corporation, county, township or school district of any state or in bonds of its own issue. All interest received from such investments shall be deposited as other funds of such sinking fund, and reinvested in like manner. For the extinguishment of any bonded indebtedness included in such fund, the board of commissioners may sell or use any of the securities or money of such fund."

In specific answer to your second question, it is my opinion that municipal bonds which have been purchased by a sinking fund of a school district may be sold or used for the extinguishment of any bonded indebtedness included in such fund.

Your third and fourth questions relate to the matter of liability of members of the old board for transferring the proceeds of the bonds to the sinking fund and for using municipal bonds purchased by the sinking fund to pay the school building bonds. In view of the opinion expressed upon your first and second questions, it is obvious that these two questions should be answered in the negative.

With respect to your fifth question as to whether or not a board of education is required to levy a tax to pay the outstanding bonds, Section 5649-1, General Code, which was in effect during the pendency of these proceedings and until 1927, provided as follows:

"In any taxing district, the taxing authority shall, within the limitations and in the manner prescribed by law, levy a tax sufficient to provide for interest and maturity payment purposes for all serial bonds issued by any political subdivision, and for interest and for sinking fund purposes of all bonds heretofore issued by such political subdivision, which tax shall be placed before and in preference to all other items, and for the full amount thereof."

The requirement that a tax be levied sufficient in amount to meet the interest and principal requirements of outstanding bonds is still contained in the law. Sections 2293-26, 5625-3, 7614, 5625-21 and 5625-33, General Code; Section 11, Article XII, Constitution of Ohio; *Link vs. Karb, Mayor*, 89 O. S. 326.

In the instant case, since there are still available in the sinking fund municipal bonds which were purchased with the proceeds of the school district bonds, perhaps no tax need be levied at this time. But the interest and principal requirements of the outstanding bonds of the district should appear in the budget. The third paragraph of Section 5625-21, General Code, is pertinent; it reads:

- "3. (a) Amount required for debt charges.
- (b) Estimated receipts from other sources that the tax levy for payment of such debt charges.
- (c) Net amount for which a tax levy shall be made. This shall be classified as to bonds authorized and issued prior to January 1st, 1922, and authorized and issued subsequent to such date, and as to what portion of the levy will be within and without the fifteen mill limitation."

Specifically answering your fifth question, it is my opinion that under present circumstances no tax need now be levied to meet interest and principal requirements of the bonds in question, but these requirements should appear in the budget of the district as provided in Section 5625-21 (3), General Code.

Coming to your sixth question, there is no authority for the transfer of funds from the sinking fund to a school building fund under the circumstances set forth. Moneys may be transferred from the sinking fund only as provided and under the circumstances set forth in paragraph c of Section 5625-10,

General Code. Under this section, such transfer may be made only after all indebtedness, interest and other obligations for the payment of which such fund exists, have been paid and retired. If the board desires at this time to construct a school building which will require the incurring of a net indebtedness in excess of one-tenth of one per cent of the tax duplicate, the question of issuing bonds for such purpose should be submitted to the electors at the next November election as provided in the Uniform Bond Act.

My opinion upon the salient points of law raised in your inquiry may be summarized as follows:

1. Proceeds of a bond issue may be used only for the purpose for which the bonds were authorized, except that in the event of the abandonment of the project after the sale of bonds, such proceeds are properly transferrable to the bond retirement or the sinking fund.

2. When a sufficient amount is held in the sinking fund to the credit of a specific bond fund to meet the interest and principal obligations upon such specific bond issue in any given year, a tax need not be levied for such year to meet the principal and interest requirements of said bond issue, but the amount of such principal and interest requirements must be set forth in the annual budget of the subdivision.

3. After abandonment of a project for which bonds have been sold and the proceeds transferred to the sinking fund of a subdivision, such funds may not be transferred back to a construction fund.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4511.

APPROVAL, TRANSCRIPT OF PROCEEDINGS RELATIVE TO AUTHORIZATION AND SALE OF CERTIFICATES OF INDEBTEDNESS FOR THE PURPOSE OF RESTORING THE DAMAGE TO THE STATE OFFICE BUILDING.

COLUMBUS, OHIO, July 22, 1932.

State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—Re: Certificates of Indebtedness of the State of Ohio, \$750,000.00.

I have examined the transcript of proceedings of your Commission relative to the authorization and sale of the above certificates of indebtedness. These certificates have been authorized by your Commission for the purpose of covering the expense of restoring the damage to the State Office Building as the result of the disaster of April 14, 1932, and to complete said structure, under authority of Sec. 1, Article VIII of the Constitution of Ohio and Amended House Bill No. 1, enacted by the second special session of the 89th General Assembly of the State of Ohio. Said certificates are dated July 15, 1932, mature July 15, 1933, and bear interest at the rate of 2½% per annum, payable January 15, 1933 and July 15, 1933. I have also examined executed certificate No. 1.

From the foregoing examination, in the light of the authority under which these certificates have been authorized and sold, I am of the opinion that the same constitute legal and binding obligations of the State of Ohio, and that the full