

1648

1. BONDS—SALE—ISSUED BY BOARD OF EDUCATION—ENTIRE PROCEEDS MAY NOT BE EXPENDED TO CONSTRUCT SCHOOL STADIUM—PURPOSE OF ISSUE “CONSTRUCTING A GROUP OF FIREPROOF SCHOOL BUILDINGS” — VOCATIONAL — AGRICULTURAL SCHOOL BUILDING, SCHOOL STADIUM, SCHOOL SWIMMING POOL AND FURNITURE AND FURNISHINGS.
2. WITHIN DISCRETION OF BOARD OF EDUCATION TO DETERMINE WHAT PORTION OF FUND MAY BE USED FOR SCHOOL STADIUM CONSTRUCTION.
3. WHERE BONDS ISSUED FOR ONE PURPOSE, WHICH CONTEMPLATES MORE THAN ONE IMPROVEMENT IN SAME CLASS, QUESTION, ABUSE OF AUTHORITY BY ISSUING AUTHORITY, IS PROPERLY DETERMINABLE BY COURT PROCEEDING.

SYLLABUS:

1. The entire proceeds of the sale of bonds issued by a board of education for the purpose of “constructing a group of fireproof school buildings, to-wit: A vocational-agricultural school building, a school stadium and a school swimming pool and furniture and furnishings” may not be expended for the construction of a school stadium.

2. It is within the sound discretion of the board of education to determine what portion of the fund derived from the proceeds of the sale of bonds issued by them for the purposes stated in syllabus 1 shall be expended for the school stadium construction.

3. Where bonds are issued for one purpose which contemplates more than one improvement falling in the same class the question of whether or not the issuing authority has abused its discretion in expending the fund derived from the proceeds of the sale of such bonds is dependent upon the circumstances in each case and is properly determinable by an appropriate proceeding in a court having jurisdiction of the action.

Columbus, Ohio, April 12, 1950

Hon. John C. Bacon, Prosecuting Attorney
Meigs County, Pomeroy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your formal opinion is requested that the Pomeroy Ex-empted Village School District of Meigs County, Ohio, may be advised as to the proper expenditure of funds in their hands, the proceeds of a bond issue in the sum of \$61,000.00. At the time this bond issue was voted, it was contemplated that federal funds in the sum of \$180,000.00 would be available to supplement said sum. World War II intervened ending federal aid. The purposes of the bond issue stated on the ballot is as follows: 'Constructing a group of fireproof school buildings, to-wit: A vocational-agricultural school building, a school swimming pool and furniture and furnishings.'

The board hired an architect and plans were drawn for the different school buildings and architects estimate was made as follows: Stadium, \$55,650.00, swimming pool, \$85,000.00, vocational agricultural \$17,350.00, which sums were based on price prevailing in 1942.

The board now finds that the sum of \$61,000.00 realized from the sale of the bonds voted by the people, is inadequate for completing all three buildings but that said sum would be adequate for completing the project which the board in its discretion, considers the most valuable and essential for school purposes, namely the Stadium for the holding of athletic contests. \$31,000.00 has already been expended upon the Stadium project and the board desires to expend the balance of the moneys in their hands upon said Stadium. I have advised the board that it was my opinion they could, in their discretion, expend this money to complete one of the projects, the completion of all three

being impossible on account of insufficient funds. The board, however, desired your opinion before proceeding to expend the balance of the funds in their hands upon the Stadium project.”

Section 5625-10, General Code, pertains to the distribution of revenue derived from tax levies and from the proceeds of the sale of bonds and reads in part as follows :

“* * * All proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision.” * * *

Money paid into any fund shall be used only for the purposes for which such fund is established.”

To the same effect Section 2293-29, General Code, provides in part as follows :

“* * * The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds or notes are issued and sold and used only for the purpose set out in the resolution or ordinance of the taxing authority, and all moneys from premiums and accrued interest, shall be paid into the sinking fund or bond retirement fund from which said bonds or notes are to be redeemed. * * *”

Section 2293-20, General Code limits the resolution of the taxing authority submitting the question of issuing any bonds to the electors which the tax authority has power to issue to one purpose and defines what such purpose may include. Said section reads 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 county or township any number of roads, highways, bridges and viaducts ; in the case of a municipality any number of streets, bridges, and viaducts, including the municipality’s share in streets to be improved in part by assessment ; 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, or for one or more roads, highways, bridges and viaducts included in the same resolution.”

The foregoing section would authorize the issuance of bonds for the several improvements originally proposed to be constructed by the Pomeroy

Exempted Village School District, Meigs County, as one purpose. I am apprised of no statutory requirement which would require a definite proportion or percentage of the proceeds of the sale of such bonds to be used for any one of several improvements of the same class where more than one is included in the same purpose.

Section 2293-9, General Code, classifies various types of improvements and specifies the maximum maturities of bonds issued for the respective purposes so classified, and of bonds issued for purposes falling within two or more of such classes. Section 2293-10, General Code, provides for the certification of the maximum maturity of such bonds by the fiscal officer of the issuing authority, and provides in part as follows:

“* * * The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class shall not exceed the amount allotted in said schedule to said class; provided, however, that whenever the bond issuing authority deems such transfer to be necessary for the carrying out of the purpose of the bond issue, then such authority may transfer any unexpended portion of the amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may be made from any class to a class with a shorter maturity. * * *”

It is thus observed that where several classes of improvements are included in one bond issue the issuing authority may transfer unexpended funds from one class to another provided the class to which the funds are transferred has a longer maturity. Where, as in the fact situation which you have presented, the several improvements fall within one class, the only limitation appears to be that they shall not exceed the “amount allotted in said schedule to said class.”

In view of the fact that Section 2293-26, General Code, requires the passage of a bond issuing resolution determining certain facts and “fixing their purpose in accordance with the prior resolution or ordinance of the taxing authority” it is assumed that the resolution issuing the bonds in the instant situation fixed the purpose of such bonds in the same language as that stated on the ballot. Upon sale of said bonds the proceeds thereof constituted a public fund of the issuing authority appropriated by virtue

of Section 2293-29, supra, for construction of the improvements set forth in said resolution. To expend the entire fund on one of such improvements in my opinion would be contrary to the declared purpose for which such fund is established. An illustration is often helpful and I submit the following:

A school program involving a bond issue of \$1,125,000 and calling for the purchase of five (5) sites and the erection and furnishing of five (5) school houses thereon, having been approved by the voters of a school district, and the bonds issued and sold, the board of education decided to alter said program and to expend all of said bond proceeds on one site and one building. Under such circumstances could it be forcefully argued in answer to a taxpayer seeking to enjoin such board that he has not been misled, particularly if he resides in a remote corner of the district and anticipated a reasonably even distribution of all of such school houses throughout the entire district? On the other hand, could it be argued by such taxpayer that he had been misled if all five sites were acquired and buildings constructed thereon but the cost of one of the sites and the construction of the building thereon amounted to \$325,000 and each of the other four buildings and sites cost \$200,000?

The point I am attempting to make is that where a fund is appropriated for more than one improvement, in the absence of a statute to the contrary, the administrative officer or body would be authorized to allocate such portion of said fund to any one project as he or it in his or its sound discretion deems necessary. An abuse of such discretion would in my opinion be dependent upon the circumstances in each case and would be properly determinable by an appropriate proceeding in a court having jurisdiction of the action.

It is, therefore, my opinion that:

1 The entire proceeds of the sale of bonds issued by a board of education for the purpose of "constructing a group of fireproof school buildings, to-wit: A vocational-agricultural school building, a school stadium and a school swimming pool and furniture and furnishings" may not be expended for the construction of a school stadium.

2 It is within the sound discretion of the board of education to determine what portion of the fund derived from the proceeds of the sale of bonds issued by them for the purposes stated in syllabus 1 shall be expended for school stadium construction.

3 Where bonds are issued for one purpose which contemplates more than one improvement falling in the same class the question of whether or not the issuing authority has abused its discretion in expending the fund derived from the proceeds of the sale of such bonds is dependent upon the circumstances in each case and is properly determinable by an appropriate proceeding in a court having jurisdiction of the action.

Respectfully,

HERBERT S. DUFFY,
Attorney General.