

288.

APPROVAL, NOTES OF WILMINGTON CITY SCHOOL DISTRICT, CLINTON COUNTY—\$80,000.00.

COLUMBUS, OHIO, April 10, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

289.

APPROVAL, BONDS OF SANDUSKY COUNTY—\$134,200.00.

COLUMBUS, OHIO, April 10, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

290.

SCHOOL BUILDING—DESTROYED BY FIRE—ISSUANCE OF BONDS FOR NEW BUILDING—LIMITATIONS OF INDEBTEDNESS DISCUSSED.

SYLLABUS:

When a schoolhouse has been destroyed by fire or other casualty and bonds are proposed to be issued for a new building to take the place of the building so destroyed, under the provisions of Paragraph (c) of Section 2293-15, General Code, bonds so issued need not be considered in ascertaining the limitations of indebtedness of such school district to the extent of three per cent of the total value of all property in such school district as listed and assessed for taxation. Furthermore, under such state of facts, if bonds are to be issued for such purpose in excess of three per cent of the tax duplicate, the consent of the Tax Commission must be secured before submitting the question to the electors as provided in this section, if such excess causes the net indebtedness to aggregate more than four per cent of the tax duplicate. In no case may such excess over three per cent as hereinbefore set forth cause the net indebtedness to exceed six per cent of the tax duplicate.

COLUMBUS, OHIO, April 10, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“In Section 2293-15 certain limitations on the amount of bonds that may be issued relative to the tax duplicate are specified. Some seem to think that in case a building is destroyed by fire and a bond issue for a building to take its

place is to be voted on under Section 2293-22, the greatest amount that may be voted on is three per cent of the tax duplicate. It seems to us that in such a case the bonded indebtedness of the district might go up to four plus three per cent without the consent of the State Tax Commission as to the amount, and to six plus three per cent with their consent. Please advise us the limitations on the amount of bonds for a new school building which might be voted under such circumstances, assuming that the district does not already have bonded indebtedness."

Section 2293-22, General Code, to which you refer, provides that when the question of issuing bonds is submitted to popular vote, such submission shall be at a November election, except that in case bonds are to be issued for the purpose of rebuilding or repairing public property, wholly or partially destroyed by fire or other casualty, or for the purpose of building a new similar building in lieu of repairing or rebuilding such property, the question may be submitted to public vote at either a primary election or a special election called for that purpose, provided the Tax Commission consents to such submission as therein provided. This section has no reference to the limitation of indebtedness which may be incurred by school districts, but merely provides that when the question of issuing bonds is submitted to popular vote, such vote shall be had at a November election with exceptions as noted above.

Coming now to the question of the limitations of indebtedness which may be created or incurred by a school district as applicable to a school district which has had a building destroyed by fire, the provisions of Section 2293-15, General Code, 112 O. L. 370, insofar as are pertinent, are as follows:

"The net indebtedness created or incurred by any school district without a vote of the people shall never exceed one-tenth of one per cent of the total value of all property in such school district as listed and assessed for taxation.

The net indebtedness created or incurred by any school district shall never exceed six per cent of the total value of all property in any such school district as listed and assessed for taxation, provided that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, unless the Tax Commission of Ohio consents thereto.

In ascertaining the limits of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered:

(a) * * *

(b) * * *

(c) Bonds heretofore issued under the provisions of Section 7630-1 or hereafter issued for the purpose of rebuilding or repairing a schoolhouse wholly or partly destroyed by fire or other casualty, or for the purpose of building a new schoolhouse in lieu of repairing or rebuilding such schoolhouse destroyed by fire or other casualty; provided that any insurance moneys received as a result of any such destruction are first applied to reduce the amounts of bonds issued for such repair, rebuilding or new construction, but bonds excepted from the limitation of this section under the provision of this paragraph (c) shall never exceed three per cent of the total value of all property in any such school district as listed and assessed for taxation."
(Italics the writer's.)

The above section, being part of the Uniform Bond Act, is now the only section of the General Code with reference to the limitations of indebtedness that may be

created or incurred by a school district with or without a vote of the people, since Sections 7630, 7630-1 and 7630-2 of the General Code were repealed at the time the Uniform Bond Act was enacted.

The reference to Section 2293-13, General Code, has no application to the question submitted and therefore need not be considered herein.

An analysis of the section under consideration discloses, first, that the unvoted net indebtedness of any school district shall never exceed one-tenth of one per cent of the total tax duplicate of the district, and, second, that the net indebtedness of any school district shall never exceed six per cent thereof; further, that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness exceed four per cent of the tax duplicate without the consent of the Tax Commission. It is then specifically provided in the first part of Paragraph (c) that bonds hereafter issued for the purpose of building a new schoolhouse to take the place of a schoolhouse destroyed by fire shall not be considered in ascertaining the limits of indebtedness as set forth in this section. Had Paragraph (c) of this section stopped there, very evidently, bonds could be issued to construct a schoolhouse to take the place of one destroyed by fire in any amount, irrespective of any limitations of debt whatsoever; however, there is placed a three per cent sub-limitation upon bonds so excepted. This three per cent limitation may be construed in two different ways. First, it may be interpreted as providing that bonds issued to replace a building destroyed by fire are exempt from any consideration in ascertaining the limit of net indebtedness as provided in the section to the extent of three per cent of the total value of all property in the school district as listed and assessed for taxation.

A second construction of this three per cent limitation is that bonds issued to construct a schoolhouse to take the place of one destroyed by fire may only be issued in the amount of three per cent of the tax duplicate. An illustration will clarify this second interpretation. For instance, a school district may have a tax duplicate in the amount of \$10,000,000.00 and a net indebtedness of \$600,000.00 within the meaning of Section 2293-15. If one of the school buildings in this district is destroyed by fire, under the provisions of this paragraph (c), bonds could be issued for a new building to replace the one so destroyed in the maximum amount of \$300,000.00. This would be permissible under either construction of the section. However, assuming that this same school district has paid off its bonded indebtedness and a \$500,000.00 building is destroyed by fire, under this construction, bonds may be issued to replace the building so destroyed only to the extent of \$300,000.00. The result of the construction here considered is that if a school district has no indebtedness and a building of greater value than three per cent of the tax duplicate, is destroyed by fire, Paragraph (c) of this section lessens the usual limitations of debt rather than extends them. The result is the direct opposite of the apparent legislative intent in especially providing for an extension of the limitation of debt in the event of an emergency. For this reason, I do not believe that it can be said in all cases, without any consideration of the net indebtedness of a school district, bonds may be issued to replace a school building destroyed by fire, only in the amount of three per cent of the tax duplicate. On the contrary, it appears that such bonds may only be issued in such amount when the net indebtedness of the district is at the time up to the limit of six per cent of the tax duplicate. If the district has a net indebtedness of two per cent at the time of such emergency, reconstruction bonds may be issued in the maximum amount of seven per cent of the tax duplicate; three per cent of the seven being exempt under this paragraph, (c), and the remaining four per cent of the seven bringing the limitation up to six per cent. In such case, of course, the consent of the Tax Commission must be secured before the question may be submitted to the electors, as the net indebtedness would thereby be raised to over four per cent. In the case you present, however, the school district has no bonded indebtedness.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that when a schoolhouse has been destroyed by fire or other casualty and bonds are proposed to be issued for a new building, to take the place of the building so destroyed, under the provisions of Paragraph (c) of Section 2293-15, General Code, bonds so issued need not be considered in ascertaining the limitations of indebtedness of such school district to the extent of three per cent of the total value of all property in such school district as listed and assessed for taxation. Furthermore, under such state of facts, if bonds are to be issued for such purpose in excess of three per cent of the tax duplicate, the consent of the Tax Commission must be secured before submitting the question to the electors as provided in this section, if such excess causes the net indebtedness to aggregate more than four per cent of the tax duplicate. In no case may such excess over three per cent as hereinbefore set forth cause the net indebtedness to exceed six per cent of the tax duplicate.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

291.

TOWNSHIP TRUSTEE—ATTENDANCE AT MEETING OF ADVISORY BOARD OF HEALTH DISTRICT—RATE OF COMPENSATION—CONDITION—EXPENSES ALLOWED IN ADDITION.

SYLLABUS:

The chairman of the board of trustees of the township who attends the meeting of the advisory board of the general health district, pursuant to the provisions of Section 1261-18, General Code, is engaged in the business of the township, and may draw \$2.50 per day for said service, under Section 3294, General Code, provided that the compensation paid to such trustee during any one year shall not exceed \$250.00. Such chairman may, in addition to such compensation, receive his expenses, under authority of Section 1261-18 of the General Code.

COLUMBUS, OHIO, April 11, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 1261-18 of the General Code provides that the mayor of each municipality not constituting a health district and the chairman of the trustees of each township in a general health district shall constitute a board to select and appoint a district board of health. It further provides that on certification of a chairman and secretary the necessary expenses of each delegate to the annual or special meeting shall be paid by the village or township he represents. Section 3294 of the General Code provides that each trustee shall receive \$2.50 for each day of service in the business of the township to be paid from the township treasury but shall not exceed \$250.00 in any one year?”

Question 1. May the chairman of the board of trustees of a township,