

1312.

BOARD OF EDUCATION—IN EMPLOYMENT OF TEACHERS NOT LIMITED BY AMOUNT OF REVENUE WHICH MAY BE ANTICIPATED—CAN ADOPT SALARY BUDGET DEPENDENT UPON APPROVAL BY ELECTORS OF SPECIAL LEVY—WHEN MONEY CAN BE BORROWED UNDER SECTION 5656 G. C. FOR DISCHARGING OBLIGATIONS OF EMPLOYMENT CONTRACTS.

*In the employment of teachers the board of education is not limited by amount of revenue which may be certainly anticipated, and may therefore adopt a salary budget dependent for success upon the approval by the electors of a special levy.*

*Employment contracts made in accordance with such budget being lawful, the rendition of service thereunder gives rise to an obligation of the district, so that if funds are not available to discharge the obligation when accrued money may be borrowed therefor under section 5656 G. C. without other limitation than the amount actually due and unpaid.*

COLUMBUS, OHIO, June 5, 1920.

HON. HAVETH E. MAU, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date in which you submit for the opinion of this department a question asked of you by the county superintendent of schools for Montgomery county, which may be phrased as follows:

May a board of education of a school district in which the school revenues are insufficient to maintain the schools, and which is disqualified from the receipt of state aid through participation in the reserve in the state common school fund by reason of the failure of the electors to approve additional tax levies, proceed to employ teachers notwithstanding the certainty of insufficient financial means and finance the school for the year by borrowing money? If so, what limitations, if any, on the power to borrow money exist?

In reality the question as you state it does not exist at the present time, but it is represented that a certain board of education in Montgomery county feels that the revenues available without the approval of an additional levy by the vote of the electors will not be sufficient to operate the schools, and being under the necessity of employing teachers before such a vote can be taken desires to be advised as to its right to do this in view of the element of uncertainty and chance involved in such a proceeding.

You refer to opinion No. 1138 of this office, dated April 9, 1920, and particularly to page 3 thereof. That page of the opinion does not relate to the question which you state. At a later point in the opinion, however, brief reference is made to questions which are of service in this connection. The eighth and ninth questions to which that part of the opinion was addressed, are as follows:

“8. Is there any limit to the amount of money that a board of education may borrow for the payment of teachers' salaries?

9. “May a board of education issue bonds under section 5656 to pay an increase of teachers' salaries made within the terms of their employment?”

The following appears in the body of the opinion with respect to these questions :

“There is no limit to the amount of money that a board of education may borrow for the payment of teachers' salaries, excepting the amount of money due and unpaid at a given time on account of such teachers' salaries. That is to say, section 5656 G. C., which furnishes the only authority for borrowing money for this purpose, does not permit such borrowing save to pay obligations unpaid at maturity.”

In order to make the situation entirely clear the following additional observation should be made—all based upon the previous opinions of this department :

By virtue of the saving clause in section 5661 of the General Code, a board of education is not precluded from entering into a contract of employment with any school employe because of the inability of the clerk of the board to certify that the money required is in the treasury or has been levied and is in process of collection. Such boards of education have general authority under statutes which need not be cited to employ teachers and fix their salaries. There is no longer any positive rule of law as to the minimum salary which may be paid to a school teacher, section 7595 of the General Code having been amended so as to strike this provision from it. However, in order to participate fully in the distribution of the state common school fund and the state levies for school purposes retained in the county, under section 7575 of the General Code the minimum annual salary paid teachers must be eight hundred dollars. The provisions of the Smith one per cent law, section 5649-3d, to the effect that all expenditures within a six months' period must be made from and within the appropriations of moneys known to be in the treasury, does not apply to borrowed money. The result is that teachers may be employed and salaries fixed. Lawful obligations are thus incurred by the district, contingent upon the rendition of services by the teachers in accordance with the terms of their several employment contracts. When these obligations accrue and are unpaid (but not before) money may be borrowed under section 5656 of the General Code for the purpose of paying them.

It will be understood that this method of financing the school district will inevitably produce chaos and should be avoided at all events. It is quite possible that the board of education in question has underrated its financial resources under House Bill 615. If this is not the case and the apprehensions of the board of education are indeed well founded, it would seem to be incumbent upon the board and the friends of the schools to make an active campaign for the approval of the additional levy.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

---

1313.

APPROVAL, BONDS OF COSHOCTON COUNTY, OHIO, IN AMOUNT OF  
\$76,000 FOR ROAD IMPROVEMENTS.

*Industrial Commission of Ohio, Columbus, Ohio.*

COLUMBUS, OHIO, June 5, 1920.