

3273.

BOARD OF EDUCATION—CANNOT ISSUE BONDS UNDER SECTIONS 7629 AND 7630 G. C. FOR PURPOSE OF OBTAINING MOTOR TRUCKS TO TRANSPORT PUPILS TO SCHOOLS—VOTE OF PEOPLE NOT NECESSARY UNDER SECTION 7629 G. C.

1. *A board of education cannot legally issue bonds under the provisions of sections 7629 and 7630 G. C. (109 O. L., 252) for the purpose of obtaining motor trucks to transport pupils to school.*

2. *Where bonds are issued under the provisions of section 7629 G. C. for the purposes mentioned therein, no vote of the people is necessary.*

COLUMBUS, OHIO, June 27, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question:

“May a board of education legally issue bonds under the provisions of sections 7629 and 7630 G. C., as amended, 109 O. L., 252, for the purpose of obtaining motor trucks to transport pupils to school?”

It would appear that the answer to this inquiry would be found in the decision of the Supreme Court in the case of Allard vs. Board of Education of Madison township village school district, decided on December 21, 1920, as reported in 101 O. S., 469, wherein the court uses certain significant language in the body of the opinion, especially on page 471. However, you indicate in a personal conference that the counsel who has taken this matter up with you raises the point that sections 7629 and 7630 of the General Code were changed by the 84th General Assembly as of May 17, 1921, that is, a day some few months later than the decision of the Supreme Court in the Allard case. It therefore becomes necessary to review the history of sections 7629 and 7630 G. C., as briefly as possible, in order to ascertain whether the decision of the Supreme Court in the Allard case, where there was an attempted issue of bonds under section 7625, would cover the present language appearing in section 7629.

Quoting from the opinion in the Allard case (101 O. S., 469) the following language appears on pages 470 and 471, to wit:

“The board of education had authority to submit to the electors the question of issuing bonds of the district only for some one or more of the purposes stated in section 7625 General Code. By the provisions of that section authority is conferred to submit to the electors of the district the question of issuing bonds for an amount estimated to be necessary to purchase a site or to erect a school house or to complete one partially built or to enlarge, repair or furnish a school house or purchase real estate for playground purposes or to do any or all of such things if the board finds that the funds at its disposal or that can be raised under the provisions of sections 7629 and 7630, General Code, are not sufficient to accomplish the purpose and that a bond issue is necessary therefor. The history of section 7625, General Code, shows that various stated purposes have been added from time to time, the last having been added in 1911, but the legislature has

not seen fit to authorize the issuance of bonds for the purpose of purchasing motor trucks or wagons.

While the requirement is made by various provisions of the law that boards of education shall provide adequate school privileges for the youth of school age, and in pursuance of that policy boards of education are required to provide means of transportation for pupils under certain circumstances, yet no authority has been expressly conferred to submit the question of issuance of bonds for such purpose under section 7625, General Code, or other provisions of the statute, and none can be implied."

In this decision the Supreme Court says that "the legislature has not seen fit to authorize the issuance of bonds for the purpose of purchasing motor trucks or wagons" and in using this language it must be inferred that the court also had before it the provisions of 7629, because direct reference is made to that section throughout the opinion of the court. Again at the close of the language excerpted from the opinion and quoted above, the court says specifically:

"Yet no authority has been expressly conferred to submit the question of issuance of bonds for such purpose under section 7625, General Code, or other provision of the statute and none can be implied."

Certainly the words "or other provision of the statute" refers to all the sections of the law other than 7625 G. C. and would thus include 7629 G. C. However, as indicated before this decision was rendered in the month prior to the opening of the session of the 84th General Assembly in January, 1921, during which section 7629 was acted upon in Senate Bill 257 (109 O. L., 252). It is significant to note also that while this decision of the Supreme Court practically points out to the legislature that no specific authority existed for authorizing the issuance of bonds for the purchase of motor trucks or wagons, yet the law-making body did not see fit in its last session to include such purpose in any of the numerous sections of the school laws which were amended. It therefore becomes necessary to establish just exactly what the law-making body did to section 7629, following the decision of the Supreme Court in the Allard case in December, 1920.

Senate Bill 257 (109 O. L., 252) consists of but two sections and an emergency clause and is of so much importance that the bill is herewith quoted:

#### "AN ACT

To re-enact section 7629 of the General Code and to amend section 7630 of the General Code, relative to the issuing of bonds by boards of education, and declaring an emergency.

*Be it Enacted by the General Assembly of the State of Ohio:*

Section 1. That section 7629 of the General Code be re-enacted and section 7630 be amended, to read as follows:

Sec. 7629. The board of education of any school district may issue bonds to obtain or improve public school property, and in anticipation of income from taxes, for such purposes, levied or to be levied, from time to time, as occasion requires, may issue and sell bonds, under the restrictions and bearing a rate of interest specified in sections seventy-six hundred and twenty-six and seventy-six hundred and twenty-seven. The board shall pay such bonds and the interest thereon when due, but provide that no greater

amount of bonds be issued in any year than would equal the aggregate of a tax at the rate of two mills, for the year next preceding such issue. The order to issue bonds shall be made only at a regular meeting of the board and by a vote of two-thirds of its full membership, taken by yeas and nays and entered upon its journal.

Sec. 7630. In no case shall a board of education issue bonds under the provisions of the next preceding section in a greater amount than can be provided for and paid with the tax levy authorized by law and subject to limitations on the combined maximum rate for all taxes in force at the date of issue. The board shall provide, subject to said limitations, for the levy of a sufficient tax for interest and sinking fund or retirement purposes in the resolution authorizing the issue. The amount of such bonds outstanding at any time shall not exceed one and one-half per cent of the tax duplicate of the district.

All bonds heretofore issued or authorized to be issued by any board of education under authority of next preceding section, for a lawful purpose, which have been or shall be sold for not less than par and accrued interest and the proceeds thereof have been or shall be paid into the treasury, shall be held to be legal, valid and binding obligations of the school district and the board of education thereof.

Section 2. That original section 7630 of the General Code be, and the same is hereby repealed.

Section 3. This act is hereby declared to be an emergency law necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the the fact that doubts exist in relation to the sections amended by this act, making it impossible to sell bonds to provide prompt and urgent relief in rapidly growing communities in which overcrowded and unsanitary conditions exist. Such conditions cannot be remedied before the next school year by resort to a vote of the people."

It will be noted from the title of Senate Bill 257 that the act did not amend 7629 General Code but re-enacted section 7629 without changing a solitary word, as the section existed in the Code at that time and as it appeared when it was under consideration in the Supreme Court in the Allard case in 1920. Senate Bill 257, however, did amend section 7630 in providing that all bonds heretofore issued or authorized under section 7629 "shall be held to be legal, valid and binding obligations of the school district," thus giving new life to both of these sections of the law.

Special attention is invited to the emergency clause (section 3 of the act) wherein the statement is made by the General Assembly:

"that doubts exist in relation to the sections amended by this act, making it impossible to sell bonds to provide prompt and urgent relief in rapidly growing communities."

This was true, for the direct cause of the introduction of Senate Bill 257 was that in one of the larger cities of the state, with a heavy tax duplicate, a bond issue running into hundreds of thousands of dollars had been issued under section 7629 G. C. and when they were attempted to be sold, leading bond attorneys of the state cast a cloud upon their sale by indicating to clients who were interested in the purchase of bonds that there was doubt as to whether section 7629 was still in force following the decision of the Supreme Court in the case of Rabe vs. Board of Education, 88 O. S., 403. It was for the purpose of giving new life to sections 7629 and

7630, and the making legal of all bonds heretofore issued under section 7629 G. C., that Senate Bill 257 was enacted, carrying with it an emergency clause which made it effective as of May 17, 1921. The emergency clause above quoted is also important in another part in that it shows the intent of the General Assembly that a vote of the people was not necessary for the issuing of bonds under section 7629 G. C., for the closing sentence of the emergency clause says:

*"Such conditions cannot be remedied before the next school year by resort to a vote of the people."*

It had been held as early as 1910 by this department that a vote of the people was not necessary in order to issue bonds under section 7629 G. C., but the language of section 7629 itself was not entirely clear on that point and is not today because it says that bonds issued under section 7629 G. C. shall be issued "under the restrictions" appearing in sections 7626 and 7627 and in these latter two sections provision is made that there shall be a vote of the people. The former holdings of this department that no vote of the people is necessary under the provisions of section 7629 was sustained in 1913 by Judge Donahue in the Rabe case, 88 O. S., 403. The language now appearing in the emergency clause of Senate Bill 257, effective in 1921, further sustains the view that no vote of the people is necessary under section 7629 G. C.

Bearing directly upon the question as to whether motor trucks for school transportation could be provided for by an issue of bonds under section 7629 G. C., it is found that in none of the numerous opinions issued heretofore by this department on section 7629 has this question ever been passed upon. Section 7629 was frequently resorted to by boards of education in years past "to obtain and improve public school property," but in none of the numerous opinions issued was the question passed upon as to whether the "school property" as used in section 7629 G. C. covered motor trucks or school vans used in transportation. While doubt was cast upon the validity of sections 7629 and 7630 G. C., by opinion 913, issued on May 4, 1914, Vol. I, Opinions of the Attorney-General for 1914, page 607 (following the decision of the Supreme Court in the Rabe case) in using the following language:

*"Sections 7629 to 7630, General Code, formerly authorized the borrowing of money \* \* \* but these sections are seriously affected by a decision of the Supreme Court in the case of Rabe et al. vs. Board of Education of the Canton school district, the full text of which is published in recent issues of the current legal publications,"*

it will be noted that in the same year (1914) opinion 1088 was issued on August 3d, appearing at page 1078, Vol. I, Opinions of the Attorney-General for 1914, and the syllabus held directly as follows:

*"On authority of Rabe vs. Board of Education, 88 O. S., 403, section 7629 General Code, providing for the issuance of bonds under certain circumstances, by boards of education, is still in effect."*

Thereafter section 7629 G. C. was held to be valid in the following opinions of this department:

Opinions of the Attorney-General:

1915, Vol I, p. 544.

1916, Vol. II, p. 1654.

- 1916, Vol. II, p. 1778.
- 1917, Vol. I, p. 773.
- 1917, Vol. I, p. 835.
- 1917, Vol. II, p. 1439.
- 1917, Vol. II, p. 1718.
- 1917, Vol. II, p. 1758.
- 1918, Vol. I, p. 82.
- 1918, Vol. I, p. 175.
- 1918, Vol. II, p. 1440.
- 1919, Vol. I, p. 816.
- 1919, Vol. II, p. 1418.
- 1920, Vol. II, p. 1183.
- 1921, Vol. I, p. 245.
- 1921, Vol. I, p. 315.
- 1921, Vol. I, p. 335.
- 1921, Vol. I, p. 559.
- 1921, Vol. II, p. 1145.
- 1921, Vol. II, p. 1158.

However, in spite of these numerous holdings of this department, in order to entirely clear up the situation, the 84th General Assembly passed Senate Bill 257, giving new life to section 7629 G. C. and making legal all bonds which had been issued theretofore under that section. In Senate Bill 257 section 7629 G. C. was not changed in a single word from the text of the section as it appeared in 1920, when it was under consideration by the Supreme Court in the Allard case, *supra*. *The section was re-enacted*, thus standing out as one of the rare instances in legislative history in the state, where a section has been enacted into law again exactly as it appeared before. Amendments to sections by law-making bodies are frequent, but a re-enactment adopting the same words is not a common occurrence. Had section 7629 G. C. been changed or amended by the 84th General Assembly, following the decision in the Allard case, one could well say that section 7629 G. C., as it appears today, was not before the Supreme Court when the Allard case was under consideration and later decided. But section 7629 G. C. was not amended or changed and as it appears today so it was before the court when the Allard case was decided in 1920 and when the court said that

“the legislature has not seen fit to authorize the issuance of bonds for the purpose of purchasing motor trucks or wagons,”

and again,

“no authority has been expressly conferred to submit the question of issuance of bonds for such purpose under 7625 G. C., or other provision of the statute, and none can be implied.”

It had been previously held by this department that motor trucks could not be purchased under authority of section 7625 G. C. (See Opinions of the Attorney-General, Vol. II, 1917, p. 1261; Vol. I, 1918, p. 847; Vol. II, 1919, p. 1056.)

It must be remembered that section 7629 is one of a series of bond issuing sections, starting with 7625 G. C. and ending at this time with section 7630-2 G. C. That they must be read largely together is indicated by the language of section 7630-1 G. C. (H. B. 33), the section under which boards of education may take care of

their obligations to a school district where the school house has been destroyed or its intended purpose is prohibited by the order of the Industrial Commission, for section 7630-1 says that that section can be used only when "it is not practicable to secure such funds under any of the *six preceding sections*," and this of course refers to sections 7625, 7626, 7627, 7628, 7629 and 7630 G. C. Again, in section 7625 G. C. it is provided that before that section can be used, the board of education must determine and certify that the funds at its disposal "or that can be raised under the provisions of 7629 and 7630 are not sufficient to accomplish the purpose."

We thus see that these three bond issuing sections, 7625, 7629 and 7630-1 G. C., each has considerable relation to the other, and unless it can be clearly established otherwise, and that does not seem possible, the words "school property," as intended in section 7625, would be the school property which was mentioned in section 7629 G. C. The Supreme Court has decided in the Allard case that school trucks do not come within the language of 7625 and more than likely if the court, having before it 7629 G. C. at the same time, believed that section 7629 offered relief in the matter of the purchase of school trucks, the court would likely have said so in its decision in the Allard case. On the contrary, the court indicated that there was no provision of law (including section 7629) for the authorization of the issue of bonds for the purchase of motor trucks for school transportation purposes, and the General Assembly has not corrected it since the time the Allard decision was handed down, although opportunity was had; this may have been an oversight on the part of the law-making body or it may have been felt that all the board of education had to do was to make a levy for a sufficiently large contingent fund to take care of the matter. It is not clear that any purposes can be read into 7629 which do not appear in 7625. Because 7625 practically says if it can be done under section 7629, then that section should be used, but if section 7629 will not yield sufficient revenue, then recourse should be had to section 7625; similarly section 7630-1 provides that before that section can be used for the purpose therein mentioned, recourse must first be had to sections 7625 and 7629. So that the sections from the standpoint of use practically come in this order: 7629 should be used first; if not sufficient, then 7625, and then if there is an emergency as described in 7630-1 G. C. the latter section could be used if not practical to use "the six preceding sections."

In reply to your question then you are advised that, based upon the language appearing in the decision of the supreme court in the case of Allard vs. Board of Education, 101 O. S., 469, and the fact that 7629 was before the court at that time, and the language of such section was not changed in Senate Bill 257, 109 O. L., 252, it is the opinion of this department:

1. A board of education cannot legally issue bonds under the provisions of sections 7629 and 7630 G. C. (109 O. L., 252) for the purpose of obtaining motor trucks to transport pupils to school.

2. Where bonds are issued under the provisions of section 7629 G. C. for the purposes mentioned therein, no vote of the people is necessary.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

3274.

APPROVAL, THIRTY-SIX LEASES, TO STATE LANDS AT AKRON, NEW-COMERSTOWN, LIMA, COLDWATER, GROVEPORT, COLUMBUS, MILLERSPORT, DELPHOS, DAYTON, MOXAHALA, CANAL WINCHESTER, LOCKVILLE, MASSILLON, LANCASTER, BARBERTON, LOCKLAND, AND HAMILTON.