

3135.

BONDS: UNDER UNIFORM BOND ACT, WHERE COUNTY HAS TAX LIST VALUATION APPROXIMATELY \$33,000,000.00, BOARD OF COUNTY COMMISSIONERS MAY ISSUE UNVOTED BONDS TO CONSTRUCT NEW GRANDSTAND BUILDING ON COUNTY FAIR GROUNDS—WHERE OLD GRANDSTAND BUILDING WHOLLY DESTROYED BY FIRE:

PROVISO:

1. AMOUNT OF SUCH BONDS ISSUED IN ANY FIVE YEAR PERIOD DOES NOT EXCEED \$20,000.00.
2. SUCH BONDS, TOGETHER WITH OTHER OUTSTANDING UNVOTED BONDS WILL NOT EXCEED COUNTY'S 1% NET INDEBTEDNESS LIMITATION.
3. SUCH BONDS CAN BE SERVICED WITHIN AGGREGATE 10 MILL LIMITATION. OTHERWISE, QUESTION, ISSUANCE SUCH BONDS SHOULD BE SUBMITTED TO ELECTORS OF COUNTY AT SPECIAL PRIMARY OR NOVEMBER ELECTION — WARREN COUNTY.

SYLLABUS:

The board of county commissioners of Warren county, which has a tax list valuation of approximately \$33,000,000, may issue unvoted bonds under authority of the Uniform Bond Act for the purpose of constructing a new grandstand building on the fairgrounds owned by the county to replace the old grandstand which was wholly destroyed by fire, provided, first, the amount of such bonds issued in any five year period does not exceed \$20,000; second, such bonds, together with other outstanding unvoted bonds of the county, will not exceed the county's 1% net indebtedness limitation; and, third, such bonds can be serviced within the aggregate ten mill constitutional tax levy limitation. Otherwise, the question of the issuance of such bonds should be submitted to the electors of the county at either a special primary or November election.

Columbus, Ohio, December 19, 1940.

Hon. C. Donald Dilatush, Prosecuting Attorney,
Lebanon, Ohio.

Dear Sir :

Your letter of December 12, 1940, requesting my opinion as to the authority of the board of county commissioners of Warren County to issue county bonds in the sum of \$20,000 or less for the purpose of constructing a new grandstand on the county fairgrounds to replace the old grandstand which recently was wholly destroyed by fire, has been received.

In your letter you state that the title to the fairgrounds is vested in Warren County, and that the assessed valuation of taxable property in the county is approximately \$33,000,000. While your letter does not state that there is a duly organized county agricultural society in Warren County, I understand that to be the fact.

Under the statutory law of Ohio, particularly Section 9887, General Code, the board of county commissioners of any county in which there is a duly organized county agricultural society, is authorized and empowered not only to acquire and hold title to real estate whereon to hold fairs, but also to erect thereon suitable buildings, and while the statute just referred to permits the payment of the purchase price of the real estate and the cost of erecting the buildings from the general fund, or from the proceeds of a voted levy when the amount to be expended exceeds \$10,000 in any one year, there is no provision therein or elsewhere that prohibits the board of county commissioners from invoking and taking advantage of the broad and comprehensive provisions of another and later law, such as the Uniform Bond Act, which clearly includes within its terms the construction of any building which such boards are authorized to construct, and also authorizes the issuance of bonds to pay the cost of construction. In other words, I do not believe that Section 9887 provides the sole and exclusive method of financing the construction of a building by the board of county commissioners on fairgrounds owned by the county.

Section 9887, above referred to, reads as follows :

"In any county in which there is a duly organized county agricultural society, the board of county commissioners is authorized to purchase or lease, for a term of not less than twenty years, real

estate whereon to hold fairs under the management and control of the county agricultural society, and may erect thereon suitable buildings and otherwise improve the same.

In counties wherein there is a county agricultural society which has purchased, or leased, real estate for a term of not less than twenty years, a site whereon to hold fairs or where the title to such site is vested in fee in the county, the county commissioners, if they think it is for the best interest of the county, and society, may erect or repair buildings or otherwise improve such site and pay the rental thereof, or contribute to or pay any other form of indebtedness of said society. The commissioners are authorized to appropriate from the general fund such an amount as they deem necessary for any of said purposes. Provided, however, that if the amount appropriated to be expended in the purchase of such real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness of said society shall exceed ten thousand dollars, in any one year, such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the county at some general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the county. The county commissioners shall pass a resolution authorizing the submission of the question to the electors and certify their action to the board of deputy state supervisors of elections of the county who shall prepare and furnish the necessary ballots and other supplies. The form of the ballots cast at such election shall be:

‘Agricultural tax—Yes.’

‘Agricultural tax—No.’

If a majority of the vote cast be in favor of such tax, it may be levied and collected as other taxes.”

Having noted that the board of county commissioners of Warren County is authorized to acquire and hold title to real estate whereon to hold county fairs, and also to erect thereon suitable buildings, and having concluded that Section 9887, General Code, does not provide the sole and exclusive method for financing the construction of a new grandstand building, attention is now directed to the provisions of the Uniform Bond Act. (Sections 2293-1, et seq., G. C.).

It is expressly provided in Section 2293-2 of the Act that

“The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to construct,”

and, under the statutory definitions contained in Section 2293-1 of that Act,

the term "taxing authority," in case of a county, means the county commissioners, the term "subdivision" includes any county, and the term "permanent improvement" means any property, asset or improvement with an estimated life or usefulness of five or more years, including land and interests therein, etc., and, as if to make it clear that buildings are included in the definition of "permanent improvements," specific reference is made to both fireproof and non-fireproof buildings in Section 2293-9 of the Act, which section fixes the maximum maturities of bonds issued for the purpose of financing the cost of their construction.

Coming now to the amount of unvoted bonds that may be issued by the county commissioners of Warren County under the Uniform Bond Act, excluding so-called federal aid bonds whose issuance is specially provided for in other acts such as recently enacted Amended Substitute Senate Bill No. 48, the normal amount of unvoted bonds that may be issued by any county is fixed by Section 2293-16 of the Act at not to exceed 1% of the first \$100,000,000 or part thereof of the county tax list, plus $\frac{1}{2}$ of 1% of such tax list in excess of \$100,000,000. This normal limitation on unvoted county bonded indebtedness is, however, limited by the proviso contained in the section that such bonds may not be issued by any county in any amount in excess of \$20,000 in any period of five years for the construction of any one county building. Of course, it is readily apparent that this proviso has no application to any contemplated \$20,000 or less bond issue, and such being the case, the \$33,000,000 tax list or duplicate of your county is more than sufficient to support a new \$20,000 or less bond issue, provided the county does not already have other outstanding bonds which either alone or in connection with the contemplated \$20,000 or less issue, would more than absorb the 1% limitation above referred to.

In the event the board of county commissioners should desire to issue fairground grandstand building bonds in an amount either in excess of \$20,000, or in excess of the normal 1% debt limitation, the question of their issuance would first have to be submitted to the electors of the county and approved by at least a 65% majority vote. (See Sections 2293-16 and 2293-23, G. C.).

In conclusion, I may add in this connection that under present laws no county tax to service any grandstand building bonds could be levied outside the ten mill tax limitation of Section 2, Article XII, Ohio Constitution, without a 65% majority vote of the electors of the county, regardless of the amount of the issue, and, further, that, if it should develop that by

reason of the 1% debt or the ten mill tax limitations above mentioned the question of issuing the bonds must be submitted to the electors, the submission may be made, if desired, at a special, primary or November election under and pursuant to the provisions of Section 2293-22, General Code, inasmuch as the building to be constructed is to replace another which was wholly destroyed by fire.

You are therefore advised that the board of county commissioners of Warren County, which has a tax list valuation of approximately \$33,000,000, may issue unvoted bonds under authority of the Uniform Bond Act for the purpose of constructing a new grandstand building on the fairgrounds owned by the county to replace the old grandstand which was wholly destroyed by fire, provided, first, the amount of such bonds issued in any five year period does not exceed \$20,000; second, such bonds, together with other outstanding unvoted bonds of the county, will not exceed the county's 1% net indebtedness limitation; and, third, such bonds can be serviced within the aggregate ten mill constitutional tax levy limitation. Otherwise, the question of the issuance of such bonds should be submitted to the electors of the county at either a special, primary or November election.

Respectfully,

THOMAS J. HERBERT,
Attorney General.