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EDUCATION, BOARD OF—MAY NOT DECLARE EMERGENCY UNDER SECTION 2293-15a G. C. AND SUBMIT TO ELECTORS QUESTION OF ISSUING BONDS IN EXCESS OF SIX PER CENT DEBT LIMITATION OF SECTION 2293-15 G. C. TO CONSTRUCT NEW SCHOOL HOUSE—PROVISO, UNLESS BUILDING TO BE CONSTRUCTED IS TO REPLACE ONE WHICH HAS BEEN DESTROYED OR CONDEMNED BY PUBLIC AUTHORITY.

SYLLABUS:

A board of education may not declare an emergency under Section 2293-15a General Code, and submit to the electors the question of issuing bonds in excess of the six per cent debt limitation of Section 2293-15 General Code, for the purpose of constructing a new school house, unless the building to be constructed is to replace one which has been destroyed or condemned by duly constituted public authority.

Columbus, Ohio, July 23, 1945

Hon. Robert C. Carpenter, Acting Prosecuting Attorney  
Tiffin, Ohio

Dear Sir :

This will acknowledge receipt of your letter in which you state that one of your local school districts is in need of a new school house, that the board of education is desirous of submitting to the electors of the district the question of issuing bonds therefor in excess of the six per cent debt limitation of Section 2293-15, General Code, and in which you inquire if the board may declare an emergency under the provisions of Section 2293-15a, General Code, and issue the bonds if their issuance be approved by the electors.

Section 2293-15, General Code, is one of the sections of the Uniform Bond Act. It was enacted in its present form by an amendatory Act passed by the 93rd General Assembly, and published in 118 Ohio Laws at page 707. After providing that "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", it also provides that certain bonds shall not be considered in ascertaining the six per cent limitation. Among the bonds that are not to be considered are those referred to in paragraph (d) of the section, which reads as follows :

"Bonds issued for replacements of, additions or improvements to buildings within a school district, following the declaration of an emergency by the local board of education pursuant to the provisions of section 5 of this act."

Section 5 of the Act has been codified as Section 2293-15a, General Code, and so far as pertinent, reads as follows :

"In school districts where school buildings have been destroyed or condemned by duly constituted public authority, or where such buildings are partially constructed or so constructed or planned as to require additions thereto before being completed, and where existing limitations makes adequate replacement, additions or improvements impossible as determined by the local board of education, such board may declare an emergency. Upon the declaration of an emergency, the local board of edu-

cation, in accordance with law, shall place before the electors of the district the question of issuing bonds for the replacement or improvement of, or the addition to school buildings. The form of the ballot shall describe the emergency existing, the authority under which it is declared, and shall state that the bond issue for emergency purposes is beyond the limitations heretofore prescribed by law and that electors are to express their wishes yes or no. If 65 per centum of the electors voting on the question of such bonds vote in favor thereof, the taxing authority of the school district shall have authority to issue such bonds in accordance with the provisions of this section, the uniform bond act of Ohio and the General Code and the debt service levies for such bonds shall be outside of all limitations on the tax rate."

As stated in Opinions of the Attorney General for 1941, No. 3598, Section 2293-15a expressly and specifically provides under what conditions and circumstances a board of education may declare an emergency and submit to the electors the question of issuing bonds in excess of existing limitations. In that case, the same as in yours, the applicability of the statute to the construction of a new school house was involved, and the conditions and circumstances under which the statute may be invoked were stated and commented on as follows:

1. Where 'school buildings have been destroyed';
2. Where school buildings have been 'condemned by duly constituted public authority'; or
3. Where school buildings 'are partially constructed or so constructed or planned as to require additions thereto before being completed.'

It seems to me quite plain that the third emergency contemplated by the Legislature (as above set forth) only exists where school buildings are under construction, or have been so started or planned 'as to require additions thereto before being completed.' According to the facts stated in your letter, no such condition exists. And of course no contention is made that the school buildings desired to be replaced have been either destroyed or lawfully condemned."

As I understand your case, the school house which your local board of education is desirous of building is a new, additional building, and not one to replace a building that has been destroyed or condemned by duly constituted public authority. If that be the case, it is quite clear that

Section 2293-15a has no application, and consequently paragraph (d) of Section 2293-15 cannot be applied.

You are therefore advised that a board of education may not declare an emergency under Section 2293-15a, General Code, and submit to the electors the question of issuing bonds in excess of the six per cent debt limitation of Section 2293-15, General Code, for the purpose of constructing a new school house, unless the building to be constructed is to replace one which has been destroyed or condemned by duly constituted public authority.

Respectfully,

HUGH S. JENKINS

Attorney General