

some specific provision of the Constitution. I see no reason to depart from the rule in this case. The Legislature has made similar provisions to those referred to above in the Toledo Municipal Court Act in a number of other municipal court acts and the Attorney General not being a court with jurisdiction to declare statutory enactments unconstitutional would only add confusion to a subject already confused if he should express his opinion to the effect that the provisions of the Toledo Municipal Court Act above referred to were unconstitutional.

You are therefore advised that it is your duty to treat the provisions of the Municipal Court Act of Toledo with respect to the manner of meeting the expenses of operating and maintaining the court as being constitutional until a court of competent jurisdiction declares them to be otherwise.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2802.

BONDS—SCHOOL BONDS ISSUED UNDER SECTIONS 5655-1 AND 5655-3,
GENERAL CODE—RETIRED—CONSIDERATION OF SAME UNDER
SECTION 2293-18, GENERAL CODE.

SYLLABUS:

Bonds issued under House Bill No. 599 of the 85th General Assembly (Sections 5655-1 to 5655-3, General Code), and retired during a calendar year, may not be considered in determining the amount of bonds which a school district is authorized to issue during said calendar year under the provisions of Section 2293-18, General Code.

COLUMBUS, OHIO, October 29, 1928.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication which reads:

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

The outstanding indebtedness of Ashland City School District is as follows:

By vote of people.....	\$491,000 00
Without vote of people.....	43,000 00
	(\$5,000 of which is retired annually)
Issue under House Bill 599, without a vote of the people.....	\$36,000 00
	(\$12,000 of which is retired annually)

The tax duplicate of the district is \$26,000,000. Under the provisions of Section 2293-18, G. C., it is provided that if at the effective date of this act any of the limitations of Sections 2293-14, 2293-15, 2293-16 and 2293-17 are exceeded in any subdivision, such subdivision so long as such excess exists, may in any calendar year issue bonds falling within the classes covered by said

limitations in an amount equal to a sum not exceeding 9/10 of the amount by which the net indebtedness on bonds of such class has been reduced during the said calendar year.

Question: In determining the amount of such bonds which this district may issue without a vote of the people under the provisions of this section, may the 9/10 provided for be based upon the \$12,000 annual payment plus the \$5,000 annual payment?"

While your communication does not specifically so state, I am informed that the \$36,000.00 of bonds above referred to as having been issued under House Bill No. 599 are all the bonds remaining outstanding and unpaid of an issue of \$96,000.00 issued in 1923 under said House Bill No. 599, of which issue \$12,000.00 of bonds are being retired annually. I am also informed that the school district in question desires at the present time to issue \$15,000.00 of bonds without a vote of the people for the purpose of meeting various outstanding debts incurred in the construction of a school building in the district.

The limitations on the bonded indebtedness of school districts are set out in Section 2293-15, General Code (112 O. L. 364, 370), which provides:

"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) Bonds issued prior to April 29th, 1902, or to refund, extend the time of payment of, or in exchange for bonds issued prior to April 29th, 1902.

(b) Bonds heretofore issued to meet deficiencies in the revenue which at the time of issuance were not required by law to fall within any debt limitation.

(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."

It is obvious that with a tax valuation of \$26,000,000.00 and an indebtedness of \$43,000.00 of bonds issued without a vote of the people, the limitation of one-tenth of one per cent on bonds issued without a vote of the people has already been exceeded and that the school district in question may not at the present time issue any further

unvoted bonds unless authority therefor can be found in some other section of the Code.

Section 2293-15, General Code, is a part of the Uniform Bond Act as is Section 2293-18, hereinafter quoted. The Uniform Bond Act was passed by the 87th General Assembly on April 21, 1927, and became effective on August 10, 1927. Section 2293-18 authorizes the issuance of certain bonds where at the time of the going into effect of the Uniform Bond Act the net indebtedness limitations of a subdivision have been exceeded. That section provides:

"If at the effective date of this act any of the limitations of Sections 2293-14, 2293-15, 2293-16 or 2293-17 hereof are exceeded in any subdivision, such subdivision so long as such excess exists may in any calendar year issue *bonds falling within the class covered by said limitations* in an amount equal to a sum not exceeding nine-tenths of the amount by which the net indebtedness on *bonds of such class* has been reduced during the said calendar year; provided, that the total bonds issued in any year under the provisions of this section shall in no case exceed an amount equal to amount of bonds which may be issued within said limitation." (Italics the writer's).

Your attention is specifically invited to the language italicized above. It will be observed that where at the effective date of the Uniform Bond Act the net indebtedness limitations of a subdivision are exceeded, Section 2293-18 permits the issuance of *bonds falling within the class covered by such limitations* in an amount not exceeding nine-tenths of the amount by which the net indebtedness on *bonds of such class* has been reduced during the calendar year. It therefore becomes essential to determine whether or not the \$96,000.00 of bonds issued in 1923 under House Bill No. 599 of which \$36,000.00 are still outstanding and which are being retired at the rate of \$12,000.00 annually fall within any of the classes covered by the limitations set out in Section 2293-15, General Code.

In ascertaining the status or class of bonds issued under House Bill No. 599 the following provisions of Section 2293-15 become pertinent:

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

(a) Bonds issued prior to April 29th, 1902, or to refund, extend the time of payment of, or in exchange for bonds issued prior to April 29th, 1902.

(b) Bonds heretofore issued to meet deficiencies in the revenue which at the time of issuance were not required by law to fall within any debt limitation.

(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 * * * ."

Section 2293-13, General Code, referred to in the above quoted portion of Section 2293-15 defines net indebtedness and provides:

"Bonds or notes issued in anticipation of the levy or collection of special assessments, either in original or refunded form, county bonds issued in anticipation of the levy or collection of township taxes, notes issued in anticipation of the collection of current revenues, notes issued for emergency pur-

poses under Section 2293-7 of the General Code or heretofore issued under Sections 4450, 5629 or 7630-1 of the General Code, and bonds issued to pay final judgments shall not be considered in calculating the net indebtedness."

Clearly the bonds in question do not fall within any of the classes set out in Section 2293-13, supra, nor do they fall within subdivisions (a) and (c) of Section 2293-15, supra. Whether or not they fall within subdivision (b) of Section 2293-15 depends upon whether or not they were at the time of issuance required to fall within any debt limitation.

House Bill No. 599 was passed by the 85th General Assembly on April 6th, 1923, and was filed in the office of the Secretary of State on April 27, 1923, becoming effective 90 days thereafter. Section 1 of the act amended Section 5655, General Code, which Sections 2, 3 and 4 of the act were new sections and were codified as Sections 5655-1 to 5655-3, General Code, both inclusive. Sections 5655-1 to 5655-3, inclusive, provide:

Sec. 5655-1. "On or before July 15, 1923, each board of education in the State of Ohio shall submit to the Auditor of State a statement of all outstanding indebtedness of the school district on July 1, 1923, in detail, with the amounts, and maturities thereof, the rate of interest thereon, if any, the authority under which incurred, the tax duplicate of the district, and all balances in the sinking fund or otherwise applicable to the payment thereof. Such statement shall be in such form and accompanied by such information as the Auditor of State may prescribe, and the Auditor of State shall have full power to make an audit of the books of any school district to determine the correctness of any such statement. In case any board of education fails to furnish such statement prior to August 1, 1923, or in case its statement is ambiguous or incomplete, the Auditor of State shall cause an audit to be made for the purpose of obtaining the information required for a current statement and in preparing the same."

Sec. 5655-2. "The Auditor of State shall examine and compile said statements and shall certify to each board of education the amount of its net floating indebtedness on July 1, 1923. The floating indebtedness shall be deemed to include all legally incurred indebtedness of the school district except bonds or notes falling due on or after January 1, 1924, and except payments not yet due on July 1, 1923, upon current contracts. The net floating indebtedness shall be the floating indebtedness less (1) all sums due and owing to the school district on July 1, 1923, (2) all cash balances on July 1, 1923, (3) all sums in any sinking fund applicable to the retirement of bonds or notes falling due prior to January 1, 1924 and (4) all sums to be received from the last half of the 1922 taxes levied specifically for the retirement of bonds or notes falling due prior to January 1, 1924."

Sec. 5655-3. "Upon receiving the certificate of net floating indebtedness from the Auditor of State, each board of education having any such indebtedness in excess of four hundred dollars shall proceed to issue the bonds or notes of the school district in the total sum of said indebtedness. Such bonds or notes shall be full general obligations of the school district and shall be divided into sixteen substantially equal semi-annual installments, the first installment falling due on February 1, 1924, and subsequent installments falling due every six months thereafter, the final installment to fall due on August 1, 1931. Such bonds or notes shall bear interest at a rate not to exceed six per cent per annum, and shall be issued or sold in the manner pro-

vided by law. The proceeds thereof shall be applied immediately to the payment of existing indebtedness or shall be held for the retirement of bonds or notes falling due prior to January 1, 1924, and it shall be unlawful to use such proceeds for any other purpose. At the time of the issue of such bonds, the board of education shall levy a tax for the payment of the interest and principal thereof."

Briefly stated, the purpose and effect of the three sections last above quoted were to place upon each board of education in the state a mandatory duty of submitting to the Auditor of State a detailed statement of all "net floating indebtedness" of such school district existing on July 1, 1923, "net floating indebtedness" being defined as all legally incurred indebtedness less bonds or notes falling due on or after January 1, 1924, and payments on current contracts not due on July 1st, 1923, and less sums due the school district, cash balances, sinking funds, etc. Upon examination of such statement by the Auditor of State and certification by him to a board of education of its net floating indebtedness, it became the mandatory duty of such board of education if such net floating indebtedness exceeded \$400.00 to fund the same by issuing bonds payable in sixteen semi-annual installments and to levy a tax for the payment of the principal of such bonds and the interest thereon.

There is nothing in the language of Sections 5655-1 to 5655-3, inclusive, supra, to indicate whether or not the bonds issued pursuant thereto are required to fall within any debt limitation. In an opinion found in 1923, Opinions, Attorney General, page 733, it was held as stated in the syllabus that:

"The tax levy provided for in Section 5655-3, G. C., as found in 110 O. L., p. 324, is within the three mill limitation provided by Section 5649-3a, G. C."

The opinion refers to and discusses House Bill No. 20 of the 85th General Assembly, known as the "Taft Bill" which was the companion act of House Bill No. 599 and which exempted all taxes for the retirement of bonds and payment of interest thereon, but which was defeated on referendum. On page 738 it is said:

"In this case, Section 5655-3, G. C., the Legislature enacted a statute, which when operating with the Taft Bill provides that the tax levy is outside all limitations, and when operating under existing statutes, is subject to the tax limitations provided in Sections 5649-2 to 5649-5b, G. C.

The practical results of the conclusion just stated is that while the issuance of bonds under Section 5653-3, G. C., is mandatory in case the net floating indebtedness described in that section and its related sections exceeds four hundred dollars, yet the levy for such bonds must be placed within the three mill limitations named in Section 5649-3a, G. C., even though this may in many instances cause a rejection of the budget.

The fact that placing such levy within the limitation will work a hardship on some taxing subdivisions does not justify the reading into the law something which was not placed there by the Legislature.

It is therefore my opinion that the tax levy provided for in Section 5655-3 as amended in 110 O. L., p. 324, is within the three mill limitation as provided by Section 5649-3a, G. C."

However, although the tax levied under House Bill No. 599 may be required to fall within the tax limitations, that fact does not of itself require that the bonds issued under the same act shall fall within the debt limitations. The provisions of Section 5655-3, supra, are mandatory. That is to say, when the Auditor of State

acting under the preceding sections certified to a board of education the net floating indebtedness of the district, such board of education was compelled, where the net floating indebtedness exceeds \$400.00, to issue bonds or notes in the sum of such indebtedness. The duty to issue such bond existed regardless of whether or not any debt limitations were exceeded thereby, and it is entirely probable that in many instances the issuance of such bonds increased the bonded indebtedness of the districts to sums far in excess of all debt limitations. In view of this fact I believe the conclusion is not unwarranted that the Legislature did not intend that bonds issued under House Bill No. 599 (Sections 5655-1 to 5655-3, inclusive, General Code), should be subject to any debt limitations.

Further sub-section (b) of Section 2293-15, General Code, exempts from all limitations on net indebtedness all bonds issued prior to the going into effect of the Uniform Bond Act *which at the time of issuance were not required by law to fall within any debt limitation*. As pointed out above there is no provision in House Bill No. 599 that bonds or notes issued thereunder should be subject to any debt limitation.

For the foregoing reasons I am of the opinion that bonds issued under House Bill No. 599 are not subject to any debt limitations and therefore fall within the class of bonds referred to in sub-section (b) of Section 2293-15, General Code.

The above leads inevitably to the conclusion that bonds issued under House Bill No. 599 are not within the class of bonds referred to in Section 2293-18, *supra*. That is to say, inasmuch as Section 2293-18 permits the issuance, where the debt limitations have been exceeded, of "bonds falling within the class covered by said limitations" in an amount equal to a sum not exceeding nine-tenths of the amount by which the net indebtedness on "bonds of such class" has been reduced during the calendar year, bonds issued under House Bill No. 599 and retired during the calendar year, not being within such class, may not be considered in determining the amount of bonds which may be issued under Section 2293-18, General Code.

There is of course no doubt as to the authority of the board of education in question to issue \$4500.00 of unvoted bonds during the calendar year, this amount being nine-tenths of the amount of unvoted bonds subject to debt limitations retired during said calendar year.

In view of the foregoing, and in specific answer to your question, it is my opinion that bonds issued under House Bill No. 599 of the 85th General Assembly, and retired during a calendar year, may not be considered in determining the amount of bonds which a school district is authorized to issue during said calendar year under the provisions of Section 2293-18, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2803.

CLASSIFIED CIVIL SERVICE—EMPLOYES SEEKING NOMINATION FOR OFFICE AT PRIMARY—GROUNDS FOR REMOVAL BUT NOT FOR WITHHOLDING SALARY—POWER OF COMMISSION TO MAKE INVESTIGATIONS.

SYLLABUS:

1. *Persons in the classified civil service, who become candidates for nomination for office, or for members of a party controlling committee, at a primary election, violate the provisions of the civil service act, and for that reason may be discharged from the service in the manner provided by law.*