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BONDS—ISSUED FOR CONSTRUCTION OF SCHOOL BUILDING—IMPROVEMENT OF OTHER BUILDINGS, SCHOOL GROUNDS AND PLAYGROUNDS—PROCEEDS MAY NOT BE USED TO PURCHASE EXISTING BUILDING.

SYLLABUS:

Proceeds from the sale of bonds voted for the purpose "of providing for the construction of a fireproof, elementary school building and a gymnasium, the making of alterations and improvements in fireproof and non-fireproof school buildings, and for the improvement of school grounds and playgrounds" and as so provided in the resolutions of the board of education passed prior to the election may not be used to purchase an existing building (real estate) to be used for school purposes.

Columbus, Ohio, July 19, 1956

Hon. Gale B. Weller, Prosecuting Attorney  
Morrow County, Mount Gilead, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Re: Expenditure of Bond Sale Proceeds by Mount Gilead Exempted School District.

“I have been requested by the Board of Education of the Mount Gilead Exempted School District to submit for your consideration and informal opinion, the following proposition, to wit:

*“FACTS*

“The above named exempted school district submitted to the electorate of the district at the November General Election in 1950, the following proposition. ‘Shall bonds be issued by the Mount Gilead Exempted Village School District for the purpose of providing for the construction of a fireproof elementary school building and a gymnasium, the making of alterations and improvements in fireproof and non-fireproof school buildings and for the improvements of school grounds and playgrounds in the sum of \$315,000.00 and a levy of taxes to be made outside of the ten mill limitation estimated by the county auditor to average 2.6 mills for each one dollar of valuation, which amounts to 26 (twenty-six) cents for each one hundred dollars of valuation, for a maximum period of 23 (twenty-three) years to pay the principal and interest of such bonds.’

“This proposition received by the necessary affirmative sought, a favorable opinion as regards the bonds was issued and the bonds sold. In the original plans and specifications there appeared a proposed improvement in the Vocational Agricultural Plant and building housing same. Due to the size of the bids on said improvement, no contract was awarded in regard to the Vocational Agricultural facility.

“As you know, state aid for the purpose of providing a Vocational Agricultural Program in the public schools of this state has recently been substantially increased. Current inspection of the local school has resulted in criticism of the Vocational Agricultural facility. School has been informed that, should not the facility be brought to minimum standards, they will not receive state aid for this program. There remains unexpended of the bond sale proceeds, the sum of approximately \$12,000.00.

Inquiry reveals that improvement of existing facility is out of the question for that figure or anything approximating it. School has been offered the opportunity to purchase an existing building, located within the corporation limits, at a price sufficiently near that of the moneys remaining in the bond sale proceeds fund, that purchase of same would be seriously considered by members of the Board, if they are legally able to expend bond sale proceeds for that purpose.

“QUESTION :

“Will the words set forth in the purpose clause in said bond issue to wit, ‘purpose of providing for the construction \* \* \* the making of alterations and improvements \* \* \*’ be sufficiently broad to permit the acquisition of an existing building by purchase?”

Your precise question seems to be as to whether funds derived from the sale of bonds voted for the purpose “of providing for the construction of a fireproof, elementary school building and a gymnasium, the making of alterations and improvements in fireproof and non-fireproof school buildings and for the improvement of school grounds and playgrounds,” could be used to purchase an existing building, real estate, to be used for school purposes.

I do not see how this question could be answered other than in the negative for the purchase of a building, real estate, is not set out as a part of the proposition voted, and I understand from your request was not included in the resolutions of the board of education passed prior to the election.

That the funds derived from the sale of the bonds may only be used for the purpose voted is provided for in Section 5705.10, Revised Code. This section is found in Chapter 5705 with relation to tax levy law and reads in material part, as follows :

“All proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue. \* \* \*

“\* \* \* Money paid into any fund shall be used only for the purposes for which such fund is established.”

And to the same purpose see also Section 133.36, Revised Code, being a part of the Uniform Bond Law which provides in material part as follows :

“\* \* \* The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds or notes are issued and sold and used only for the purpose set out in the resolution or ordinance of the taxing authority, and all moneys from premiums and accrued interest shall be paid into the sinking fund or bond retirement fund from which said bonds or notes are to be redeemed. \* \* \*”

It should also be kept in mind that the maturities for bonds issued for the purpose of acquiring real estate are different from the maturities of those issued for the erection of buildings and the improvement of school grounds. See Section 133.20, Revised Code.

In support of my conclusion I wish to quote from three opinions of my predecessors in office on similar questions.

In Opinion No. 4510, Opinions of the Attorney General for 1932, page 869, it was held as set forth in paragraph 1, of the syllabus, as follows:

“Proceeds of a bond issue may be used only for the purpose for which the bonds were authorized, except that in the event of the abandonment of the project after the sale of bonds, such proceeds are properly transferable to the bond retirement or the sinking fund.”

In Opinion No. 392, Opinions of the Attorney General for 1949, page 119, it was held that:

“Where a county issues bonds for the purpose of acquiring a site and erecting a building for a county hospital and the proceedings of the bond issuing authority prior to the submission of the question of the issuance of such bonds to the electors of the county and the ballot used at the election thereon state the purpose of the issue to be ‘acquiring a site an (and) erection of a building for a county hospital’, no part of the proceeds from the sale of bonds issued pursuant to such proceedings may be used for the purpose of equipping such hospital.”

Also, in another opinion of the Attorney General issued in the same year, being No. 425, page 164, it was held that:

“Where bonds are issued by a school district for ‘the purpose of constructing and equipping fireproof additions to existing school buildings’ the board of education is not authorized to expend any portion of the proceeds of the sale of such bonds for the purpose of installing a new furnace in the presently existing school buildings unless such new furnace is necessary to adequately heat the new additions to the existing school buildings.”

It is therefore my opinion that proceeds from the sale of bonds voted for the purpose "of providing for the construction of a fireproof, elementary school building and a gymnasium, the making of alterations and improvements in fireproof and non-fireproof school buildings, and for the improvement of school grounds and playgrounds" and as so provided in the resolutions of the board of education passed prior to the election may be used to purchase an existing building, real estate, to be used for school purposes.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General