

and perform all of the duties now conferred by law upon the Ohio Board of Administration *with relation to the release, parole, and probation of persons confined in or under sentence to the penal or reformatory institutions of Ohio*; and thereafter the said Ohio Board of Clemency, shall be vested with and assume and exercise all powers and duties *in all matters connected with the release, parole or probation of persons confined in or under sentence to the penal institutions of Ohio*, now cast by law upon the said Ohio Board of Administration. \* \* \* (Italics the writer's.)

It will be noted, as you state in your letter, *supra*, that the Ohio Board of Clemency supersedes the Ohio Board of Administration *only* with relation to the release, parole and probation of persons confined in or under sentence to the penal institutions of Ohio and that such board has no authority or jurisdiction in regard to the transfer of inmates from one of the several penal institutions to another.

Opinion No. 819, dated August 2, 1927, Opinions, Attorney General, 1927, is erroneous in so far as the language appearing therein purports to authorize the Ohio Board of Clemency, with the written consent of the Governor, to transfer inmates of the Ohio State Reformatory to the Ohio Penitentiary. The language which should have appeared therein is that such transfers can be made by the *Ohio Board of Administration (now the Director of Public Welfare)*.

I am forwarding a copy of this opinion to the Ohio Board of Clemency in order that Opinion No. 819, may be correctly construed. I thank you for calling this error to my attention.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1281.

BONDS FOR TOWNSHIP ROAD IMPROVEMENTS—SUBJECT TO TWO PER CENT LIMITATION AND MUST BE SUBMITTED TO VOTE OF ELECTORS—TOWNSHIP TRUSTEES MAY ISSUE NOTES IN ANTICIPATION OF TAXES WITHOUT VOTE OF ELECTORS.

**SYLLABUS:**

1. *Under the provisions of Section 2293-17, General Code, bonds issued by a township to pay the township's portion of the cost of improving a county road are subject to the two per cent limitation on the net indebtedness of the township, and no such bonds may be issued without first submitting the question of the issuance of such bonds to a vote of the electors of the township.*

2. *Township trustees may borrow money and issue notes in anticipation of the collection of current revenue or of special assessments or for emergency purposes under Sections 2293-4, 2293-24 and 2293-7, General Code, respectively, without submitting the question of issuing such notes to a vote of the electors of the township and without regard to the net indebtedness limitation set out in Section 2293-17, General Code.*

COLUMBUS, OHIO, November 18, 1927.

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

GENTLEMEN:—Acknowledgment is made of your communication dated November 16, 1927, requesting my opinion upon the following:

"We respectfully request you to furnish this department with your written opinion upon the following:

Section 2293-17, as enacted in 112 Ohio Laws, at page 372, provides that the net indebtedness created or incurred by a township, exclusive of the *bonds* excepted in Section 2293-13, G. C., and exclusive of county bonds issued in anticipation of township tax levies shall never exceed 2% of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors.

Section 6921-1, G. C., before and after its amendment in 112 Ohio Laws, page 492, provided that township trustees might issue bonds to pay the township's share of a county road.

Question 1. In view of the provisions of Section 2293-17, may township trustees issue such bonds without a vote of the electors?

Question 2. May they issue notes in anticipation of the collection of current revenue or special assessments or for emergency purposes under Section 2293-7, G. C., without a vote of the electors?"

Sections 2293-17, 2293-13 and 2293-7, General Code, referred to in your communication, were all enacted as parts of House Bill No. 1 passed by the 87th General Assembly on April 21, 1927, effective August 10, 1927.

Section 2293-17, General Code, provides:

"The net indebtedness created or incurred by a township, exclusive of the bonds excepted in Section 2293-13 of the General Code, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors."

The term "net indebtedness" is defined in Section 2293-13, General Code, as follows:

"The net indebtedness of any subdivision shall be the difference between the par value of the outstanding and unpaid bonds and notes of the subdivision and the amount held in the sinking fund and other indebtedness retirement funds for their redemption. An indebtedness shall not be deemed to have been created or incurred until the delivery of the bonds under contract of sale.

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 purposes 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."

From a study of the two sections above quoted, it seems clear that unless the bonds or notes which a township proposes to issue fall within the list of exempted

bonds or notes, as set out in Section 2293-13, *supra*, they are subject to the net indebtedness limitation of two per cent of the total value of all property in such township, as listed and assessed for taxation, and further that such bonds or notes may not be issued unless authorized by vote of the electors.

While it is true, as stated in your communication, that Section 6921-1, General Code, both before and after its amendment in House Bill No. 67 of the 87th General Assembly (112 O. L. 492) provided, and still provides, that a township may issue bonds to pay the township's portion of the cost of a county road, that authority is not conclusive but is limited by the provisions of Section 2293-17, *supra*, that is, unless such bonds are exempted under the provisions of Section 2293-13, General Code, they are subject to the two per cent net indebtedness limitation and may not be issued without authority of a favorable vote of the electors of the township. Examination of Section 2293-13, *supra*, clearly reveals that such township portion bonds are not among the classes of bonds exempted in Section 2293-13, and it is therefore evident that a township may only issue bonds to pay the township's portion of the cost of improving a county road, if the issue of such bonds does not increase the net indebtedness of the township beyond two per cent of the total value of all property in the township, as listed and assessed for taxation, and then only if the question of issuing such bonds has been submitted to a vote of the electors and a favorable vote thereon has been returned.

Coming now to a consideration of your second question, that is, whether townships may issue notes in anticipation of the collection of current revenue or special assessments or for emergency purposes under Section 2293-7, General Code, without a vote of the electors, Section 2293-7, General Code, provides:

"In case of epidemic or threatened epidemic, or during an unusual prevalence of a dangerous communicable disease, or in case of the destruction by fire, flood or extraordinary catastrophe of any bridge, road, school or public building, if it is determined by the Tax Commission of Ohio that funds are not otherwise available, the taxing authorities may borrow money and issue notes: (a) to defray those expenses which the local board of health deems necessary to prevent the spread of such disease, or (b) to provide temporary facilities for bridge, road, school or building purposes. Such notes shall mature one-half on March first next following the next February tax settlement at which, in accordance with the ordinary budget procedure, a tax to pay such notes can be included in the budget and one-half on the following September first, and a tax shall be levied to pay such notes, which tax shall be outside of all limitations of law."

Authority for the borrowing of money and issuing of notes in anticipation of the collection of current revenues is found in Section 2293-4, General Code, which reads:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated.

No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

Authority for the borrowing of money and issuing of notes in anticipation of the levy of special assessments or the issuance of special assessment bonds is found in Section 2293-24, General Code, which provides in part:

" \* \* \* Subdivisions may borrow money and issue notes, due and payable not later than two years from the date of issue, in anticipation of the levy of special assessments or of the issuance of bonds, as provided in this section. The notes shall not exceed in amount that portion of the estimated cost of the improvement or service for which the assessment is levied. When such notes are issued, the proceeds of bonds thereafter issued in anticipation of the collection of assessments and all of the assessments collected for the improvement shall be applied to the payment of the notes and interest thereon until both are fully paid. \* \* \* "

Section 2293-17, General Code, quoted above, provides that the net indebtedness created or incurred by a township, exclusive of the *bonds* excepted in Section 2293-13, General Code, and other exceptions, shall never exceed two per cent of the total value of the property in the township as listed and assessed for taxation, and further provides that no *such indebtedness* with said exceptions, shall be incurred unless authorized by vote of the electors.

As pointed out above, Section 2293-13, General Code, defines "net indebtedness" and provides that notes issued in anticipation of the levy or collection of special assessments, either in original or refunded form, notes issued in anticipation of the collection of current revenues, and notes issued for emergency purposes under Section 2293-7, General Code, shall not be considered in calculating such net indebtedness. While Section 2293-17, General Code, speaks of the net indebtedness of the township, exclusive of the *bonds* excepted in Section 2293-13, General Code, I find no difficulty in concluding that the use of the word "bonds" is not exclusive, that is, although Section 2293-17 apparently excludes bonds in the calculation of net indebtedness, Section 2293-13 specifically defines net indebtedness and specifically exempts the notes authorized by Sections 2293-4, 2293-7 and 2293-24, *supra*, from the calculation of such net indebtedness. It is therefore my opinion that the notes referred to in your second question may be issued by a township without submitting the question of the issuance of such notes to a vote of the people, and further that such notes are not subject to the two per cent net indebtedness limitation set out in Section 2293-17, General Code.

Answering your questions specifically, it is my opinion:

1. Under the provisions of Section 2293-17, General Code, bonds issued by a township to pay the township's portion of the cost of improving a county road are subject to the two per cent limitation on the net indebtedness of the township and that no such bonds may be issued and without first submitting the question of the issuance of such bonds to a vote of the electors of the township.

2. Township trustees may borrow money and issue notes in anticipation of the collection of current revenue or of special assessments or for emergency purposes under Sections 2293-4, 2293-24 and 2293-7, General Code, respectively, without submitting the question of issuing such notes to a vote of the electors of the township and without regard to the net indebtedness limitation set out in Section 2293-17, General Code.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*