

1865.

COUNTY CHILDREN'S HOME—ADDITION FOR SCHOOL AND CHAPEL PURPOSES DESTROYED BY FIRE—CONDITION NECESSARY FOR RIGHT OF COMMISSIONERS TO REBUILD WITH INSURANCE MONEY AND FUNDS FROM BOND ISSUE.

SYLLABUS:

In the event it is impossible for the inmates of a county children's home to attend the public school or schools in the district in which such home is located and it is necessary to maintain a school at such home, when such school has been destroyed by fire, the insurance money received may be used to construct a new school building, and bonds may be issued for such purpose by the county commissioners, as provided in the Uniform Bond Act.

COLUMBUS, OHIO, May 15, 1930.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“May I request your opinion in regard to the following:

Darke County has for many years maintained a county children's home. Subsequent to the construction of the children's home proper the board of trustees of Darke County Children's Home by resolution requested the county commissioners to build an additional building, the purpose for which, as expressed in the resolution presented to the commissioners, was for school and chapel purposes.

This resolution was approved by the county commissioners and proper legislation had for the construction of a building, which from that time until recently has served as a school building for the children resident in the children's home.

During the years the county commissioners have carried the insurance on the building, which was burned recently. This insurance was paid after the fire and is now in the general county fund.

The purpose of this inquiry is to request of you whether or not the county commissioners have authority under the present law, regarding the establishment and maintenance of the Children's Home, to reconstruct the school building which recently burned.”

Section 2433, General Code, 112 O. L. 381, which is part of the Uniform Bond Act, provides, insofar as is pertinent, as follows:

“The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a * * * county children's home and other necessary buildings, and sites therefor; also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress.”

This section expressly authorizes the taxing authority of any county, which under the provisions of Section 2293-1, General Code, is the board of county commissioners, to rebuild a county children's home and other necessary buildings. It becomes necessary to consider the question of whether or not the building to be used for school and

chapel purposes is a necessary building for a county children's home. Section 7676, General Code, provides as follows:

"The inmates of a county, semi-public or district children's home shall have the advantage of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located.

Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the city, township, village or special board of education, having jurisdiction over the school district within which such home is located.

Such board of education shall employ with the approval of the superintendent of the home, necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light."

The Legislature apparently contemplated in the enactment of this section that a school should not be maintained by the county as a part of the county children's home unless it is impossible for the inmates to attend the public school or schools in the district within which the home is located. Should it be impossible for the inmates of the particular home in question to attend such public school or schools, it follows that a school is a necessary building within the meaning of Section 2433, supra.

Upon the assumption that such school is necessary, if the insurance money received in the instant case is insufficient to reconstruct the building in question, bonds may be issued to raise the excess funds required, under the provisions of the Uniform Bond Act. Section 2293-2 expressly provides that the taxing authority of any subdivision shall have power to issue bonds for the purpose of constructing any permanent improvement which such subdivision is authorized to acquire or construct. The building in question is a permanent improvement within the definition of Section 2293-1 General Code, and a county is authorized to construct such a building under the provisions of Section 2433, supra, providing, of course, it is necessary to maintain a school at the home.

The amount of bonds which may be issued for such purpose is governed by Section 2293-16, General Code, which provides the limitation of net indebtedness which may be created or incurred by any county with or without a vote of the electors. The net indebtedness which may be created or incurred without a vote of the electors may not exceed a sum equal to one per cent of the first \$100,000,000 or part thereof of the tax list of the county, plus one-half of one per cent of such tax list in excess of \$100,000,000. There is a further limitation in this section as to unvoted net indebtedness to the effect that except by vote of the electors bonds may not be issued in an amount exceeding \$20,000.00 in any period of five years for the construction of any one county building, including the acquisition of a site therefor. Another limitation is placed upon the amount of net indebtedness which may be incurred with a vote of the electors. There are certain exceptions as to specific issues which need not be considered in computing the limitations of net indebtedness under this section, none of which is applicable to the situation here under consideration.

Section 2333, General Code, should also be noted in passing, relative to submitting to the electors the question of issuing bonds for a county building to cost in excess of twenty-five thousand dollars.

In the event it should be necessary to submit an issue for the foregoing purpose to the electors, this question must be submitted at the regular November election unless the consent of the Tax Commission is secured under the provisions of Section 2293-22, General Code, the purpose of the issue being to reconstruct a building destroyed by fire.

You state that the insurance money on hand has been paid into the general fund. Section 5625-5, General Code, being part of the Budget Law, provides that the taxing authority of a subdivision may include in the general levy the amount required for the carrying into effect of any of the general or special powers granted to the subdivision, including the construction of permanent improvements. It is obvious, therefore, that this insurance money now in the general fund may be used for the reconstruction of the building in question.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1866.

APPROVAL, BONDS OF SHARONVILLE VILLAGE SCHOOL DISTRICT,
HAMILTON COUNTY—\$1,500.00.

COLUMBUS, OHIO, May 15, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1867.

APPROVAL, BONDS OF HIGHLAND COUNTY, OHIO—\$12,082.75.

COLUMBUS, OHIO, May 15, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

1868.

WRONGFUL COMMITMENT—PERSON PLACED IN STATE HOSPITAL BY
PROBATE JUDGE—NO LIABILITY AGAINST COUNTY.

SYLLABUS:

A county is not liable in damages to one wrongfully committed to a state institution by the Probate Court in that county.

COLUMBUS, OHIO, May 15, 1930.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your letter which reads as follows:

“Sometime ago this office rendered an opinion to the Board of County Commissioners of Cuyahoga County, Ohio, of which board we are by law constituted legal advisors.