

service, within the meaning of that term as used in Section 4842-12, General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General

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7077

1. BOND ISSUE — TO CONSTRUCT AND EQUIP VOCATIONAL SCHOOL BUILDING — APPROVED BY ELECTORS OF SCHOOL DISTRICT.
2. NOTES — SHORT TIME — MAY ONLY BE ISSUED IN ANTICIPATION OF ISSUANCE OF BONDS — IF ISSUED AND SOLD, UNIFORM BOND ACT CONTEMPLATES BONDS SHALL BE ISSUED AND SOLD AND NOTES PAID FROM PROCEEDS OF BOND SALE AND ANY MONEY REMAINING FROM SALE OF NOTES — SECTION 2293-1 ET SEQ., G.C.
3. SALE OF NOTES ISSUED BY BOARD OF EDUCATION, UNIFORM BOND ACT — GOVERNED BY SECTIONS 2293-27, 2293-28, 2293-29, 2293-29b, 2295-14 G.C.

**SYLLABUS:**

1. When a bond issue for the purpose of constructing and equipping a vocational school building has been approved by the electors of a school district, short time notes may only be issued in anticipation of the issuance of the bonds, and if such notes are issued and sold, the Uniform Bond Act, Section 2293-1, et seq., General Code, contemplates that the bonds shall be issued and sold and the notes paid from the proceeds of the bond sale and any money remaining from the sale of the notes.

2. The sale of notes issued by a board of education under authority of the Uniform Bond Act is governed by Sections 2293-27, 2293-28, 2293-29, 2293-29b and 2295-14, General Code.

Columbus, Ohio, August 17, 1944

Hon. D. H. Peoples, Prosecuting Attorney  
Pomeroy, Ohio

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you state that the electors of one of your school districts approved a bond issue for the purpose of constructing and equipping a vocational school building, and inquiring if the board of education may dispense with the issuance of bonds and issue short time notes to be serviced by a tax levy outside of the ten mill tax limitation.

The issuance of short time notes by boards of education in bond election proceedings initiated for the purpose of constructing and equipping public school buildings, is regulated and governed by the Uniform Bond Act, Section 2293-1, et seq., General Code. Under that act all notes issued by boards of education, except emergency notes authorized by Section 2293-7, General Code, to provide temporary facilities in cases where buildings have been destroyed by fire, flood, or extraordinary catastrophe, may only be issued in anticipation of the issuance of bonds, and if such anticipatory notes are issued and sold, it is contemplated that the bonds shall be issued and sold, and the notes paid from the moneys remaining from the proceeds of the sale of the notes, and the money from the sale of the bonds. The following pertinent provisions of the Uniform Bond Act will serve to confirm the views just expressed.

Section 2293-25, General Code, provides, among other things, that:

“ \* \* \* in any case where an issue of bonds has been approved by a vote of the people, the taxing authority shall by ordinance or resolution determine whether notes shall be issued in anticipation of the issue of bonds, and, if so, the amount of such anticipatory notes, not to exceed the amount of the bond issue, the rate of interest, the date of such notes, and their maturity, not to exceed two years.”

Section 2293-26, General Code, then provides that:

“ \* \* \* if such notes are issued, when they are about to fall due, the taxing authority shall adopt a resolution or ordinance determining whether the bonds are to be issued in

one lot or in installments, and fixing the amount of the bonds to be presently issued which shall not be greater than the amount authorized; \* \* \*.”

After the bonds have been issued and sold, it is provided in Section 2293-29, General Code, as follows:

“If anticipatory notes have been issued, the moneys remaining from the proceeds of sale of such notes, and money from the sale of bonds shall be used for the purpose of paying such anticipatory notes.”

A similar question was presented to the Attorney General several years ago in a case involving an unvoted bond issue, and in Opinion No. 3256, reported in the Opinions of the Attorney General for 1931, page 710, it was held:

“Except as provided in Section 2293-7, General Code, a school district may not issue notes for the acquisition or construction of a permanent improvement, which notes are not issued in anticipation of the issuance of bonds.”

The authority of a board of education to issue short time notes under the Uniform Bond Act was also considered in Opinion No. 1219, reported in Opinions of the Attorney General for 1927, page 2155. I quote from that opinion, as follows:

“Boards of education are creatures of statute and as such have only those powers which are specifically conferred upon them by statute and those which are incident to the powers so conferred. Section 2293-25, General Code, supra, authorizes the issuance of notes in anticipation of the issuance of bonds. It follows that unless it is proposed to issue bonds, there is no authority to issue such notes. The theory of the law pertaining to bonds is that where a subdivision proposes to incur any indebtedness for an improvement, such indebtedness shall be evidenced by bonds. The notes authorized by Section 2293-25, supra, are a temporary financing proposition. Their purpose is to furnish a medium for obtaining money quickly so that funds may be available for use in the construction of an improvement until such time as bonds can be issued pursuant to proper legislation. It was never the intention that the indebtedness of a subdivision should be evidenced by notes. Such notes are purely temporary in character and, as provided in Section 2293-25, supra, can be issued only in anticipation of the issuance of bonds. \* \* \*

From what has been said above, it seems clear that where a

board of education or the taxing authority of any other subdivision proposes to issue notes in anticipation of an issue of bonds, knowing from the beginning of the proceedings that bonds are not to be issued, the issue of such notes would be illegal. \* \* \*

While, as stated above, short time notes (except the Section 2293-7 emergency notes) may only be issued under the Uniform Bond Act in anticipation of the issuance of Bonds, and the Act contemplates that the bonds will be issued and sold when the notes are about to fall due, and the proceeds applied to the payment of the notes, it was held by the former Attorney General in Opinion No. 1219, supra, that when notes have been issued in good faith, and thereafter a change in the financial condition of the issuing subdivision makes possible the payment of the notes at maturity from other available funds, the issuance and sale of the bonds becomes unnecessary. The possible sources of future revenue which the former Attorney General had in mind were stated to be gifts or bequests, a substantial and unanticipated increase in the tax duplicate, or the receipt of funds from other unanticipated sources, which, together with the funds derived from the interim debt service tax referred to in Section 2293-25, General Code, make it possible to pay or otherwise discharge the notes at maturity. Of course, if these funds are not received, or are not available at the time notes fall due, the notes would be in default until the bonds anticipated by their issuance are issued and sold. In other words, the existence of the funds and their availability are questions that can only be determined at or about the time the notes fall due.

You also inquire if it is necessary for the board of education to offer short time notes to any particular group or organization, or to advertise them for sale.

The Uniform Bond Act, Section 2293-27, General Code, requires that all notes issued by a board of education shall first be offered for sale at par and accrued interest to the trustees or commissioners or other officers who have charge of the subdivision's sinking fund. If there be no sinking fund the notes should be offered to the clerk-treasurer of the school district. See Sections 2293-27 and 2295-14, General Code, and related sections. If the offer is rejected, notes having a maturity of one year or less may be sold at private sale, and those having a maturity of more than one year must be advertised for sale and sold to the highest

bidder. See Sections 2293-28 and 2293-29, General Code. The only exception to this procedure is that provided by Section 2293-29b, General Code, which provides that prior to advertising the notes for sale, issues which do not exceed the principal sum of \$15,000 may be sold to the Industrial Commission, the State Teachers' Retirement System, the Public Employes' Retirement System and the School Employes' Retirement System, or to one or more of them.

You are therefore advised as follows:

1. When a bond issue for the purpose of constructing and equipping a vocational school building has been approved by the electors of a school district, short time notes may only be issued in anticipation of the issuance of the bonds, and if such notes are issued and sold, the Uniform Bond Act, Section 2293-1, et seq., General Code, contemplates that the bonds shall be issued and sold and the notes paid from the proceeds of the bond sale and any money remaining from the sale of the notes.

2. The sale of notes issued by a board of education under authority of the Uniform Bond Act is governed by Sections 2293-27, 2293-28, 2293-29, 2293-29b and 2295-14, General Code.

Respectfully,

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