

4637.

APPROVAL, BONDS OF FAIRVIEW VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$25,000.00 (UNLIMITED).

COLUMBUS, OHIO, September 6, 1935.

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

4638.

APPROVAL, ARTICLES OF INCORPORATION OF THE LIGHTNING ROD MUTUAL FIRE PROTECTIVE ASSOCIATION.

COLUMBUS, OHIO, September 6, 1935.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the certificate of amendment to the articles of incorporation of The Lightning Rod Mutual Fire Protective Association, which you have submitted to me for my approval, and finding the same not to be inconsistent the Constitution or laws of the United States or of the State of Ohio, I herewith am returning said certificate with my approval endorsed thereon.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4639.

BOARD OF EDUCATION—PROCEEDS OF BONDS ISSUED BY BOARD OF EDUCATION UNDER H. B. NO. 11 AS AMENDED BY H. B. NO. 140, APPLICABLE TO PAYMENT OF WHICH BONDS—PURCHASE OF MACHINERY BY TOWNSHIP TRUSTEES.

SYLLABUS:

1. *The proceeds of bonds issued by a Board of Education under the*

provisions of House Bill No. 11 of the 3rd Special Session as amended by Amended House Bill No. 140 of the Second Special Session of the 90th General Assembly, are applicable to the payment of bonds of said school district which were due and unpaid on July 1, 1934 and not refunded except those bonds which were issued by it under the provisions of any Act passed by the 90th General Assembly prior to the effective date of said House Bill No. 140, which bonds are in excess of the debt limitations that may be incurred.

2. *Machinery to operate a gravel bank or pit, which gravel bank has been donated to the township for road purposes, may be purchased only pursuant to authority of the electors, notwithstanding the fact that sufficient available funds may be on hand for such purpose.*

COLUMBUS, OHIO, September 6, 1935.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication which reads as follows:

“May a Board of Education, having issued indebtedness refunding bonds by and under authority of House Bill No. 11, as amended by House Bill No. 140, use the proceeds from the sale of said bond issue to pay a defaulted bond having been issued by said Board for the purpose of erecting a new building?”

Following up your Opinion No. 4339 dated June 15th, 1935: Provided township trustees would have donated to them for township road purposes a gravel bank without cost to the trustees or to the township for the gravel, could they without submitting the proposition to the electors, purchase machinery to operate such gravel bank?”

With reference to your first question, House Bill No. 11 of the Third Special Session, as amended by Amended House Bill No. 140 of the Second Special Session of the 90th General Assembly, authorizes boards of education to issue bonds to pay their net floating indebtedness as of July 1, 1934, as said term is defined in the Act. The Act provides that the statement required to be furnished by each Board of Education to the State Auditor, upon which he must determine the amount of said floating indebtedness, shall show, among other things:

- (1) An itemized statement of the outstanding indebtedness.
- (2) The security of any indebtedness previously incurred or unpaid or in default.
- (3) The rate of interest on any such obligations, if any.

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(8) The itemized statement required shall show in detail the purpose, and amount of the indebtedness incurred for

- (a) current operating expenses;
- (b) capital outlay including bonds in default;
- (c) debt service including interest payments due and unpaid.

(9) All balances in the sinking fund or otherwise applicable to the payment of any indebtedness due and unpaid on July 1, 1934.

Section 3 of said House Bill 11 provided as follows:

“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, 1934. The floating indebtedness shall be determined to include all legally incurred indebtedness of the school district except bonds or notes issued under any act heretofore passed authorizing the issuance of any evidence of debt in excess of the limitations fixed by law. The floating indebtedness shall also include any amounts due prior to January 1, 1935, on notes issued in anticipation of the collection of taxes under section 2293-4 of the General Code. The net floating indebtedness shall be the total floating indebtedness less, (1) all sums due and owing to the school district on July 1, 1934, other than delinquent taxes, or taxes collected but not paid into the school district treasury by the county auditor because such collected taxes were in a depository in the process of liquidation or operating on a restricted withdrawal basis under authority of the state superintendent of banks, including amounts due the general fund from the state educational equalization fund; (2) and general fund cash balance on July 1, 1934, other than funds on deposit in banks in the process of liquidation or operating on a restricted withdrawal basis under authority of the state superintendent of banks.”

Section 4 of the Act provides that:

“Upon receipt of the certificate of net floating indebtedness from the auditor of state each board of education having any such indebtedness shall proceed to issue the bonds of the school district in the total sum of said indebtedness less the amount of bonds which may have been heretofore issued under the provisions of any act heretofore passed by the ninetieth general assembly authorizing the

issuance of bonds and which bonds are already in excess of the debt limitations which may be incurred * * *.”

In the amendment of said Act by said Amended House Bill No. 140, only the second sentence of Section 3 was changed. This sentence now reads as follows:

“The floating indebtedness shall be determined to include all legally incurred indebtedness of the school district * * * due and unpaid on July 1, 1934, even though such debts may be secured by bonds or notes issued under any act heretofore passed authorizing the issuance of any evidences of debt in excess of the limitations fixed by law.”

Section 4 was re-enacted in said Amended House Bill No. 140 but was not changed in any way.

From the reading of the statute, it is clear that bonds due and unpaid on July 1, 1934 are included by the State Auditor in determining the net floating indebtedness of a school district, unless said bonds were refunded under the general refunding bond law and consequently such bonds should be paid from the proceeds of bonds issued under the act in question, except such bonds which have been issued prior to the effective date of said Act, under the provisions of any Act heretofore passed by the 90th General Assembly, which bonds are already in excess of the debt limitations which may be incurred.

Coming now to your second question, the first branch of the syllabus of Opinion No. 4339, rendered to you on June 15, 1935, is as follows:

“1. A board of township trustees may purchase land containing gravel for use on the township roads, and machinery to operate such land, only pursuant to authority of the electors, notwithstanding the fact that sufficient available funds may be on hand for such purpose.”

The foregoing opinion referred to and followed an opinion of this office reported in *Opinions of the Attorney General for 1928*, Vol. 2, Page 1071, holding that if additional machinery is to be purchased for the operation of a stone quarry owned by the township, that it was necessary to submit the question to the electors before making such purchase. The then Attorney General held that machinery could be purchased, without authority of an election, to replace machinery or parts of same which have become broken or worn out. The purchase of replacement machinery was, however, carefully distinguished by the then Attorney General from the purchase of addi-

tional machinery. The language of the opinion at page 1073 is clear as to this point:

“The above discussion has been limited to the purchase of machinery to replace that worn out in the operation of a stone quarry owned and controlled by township trustees. However, you inquire both as to replacement and *additional* machinery. For the purposes of this opinion I assume that by additional machinery you mean machinery not for replacement purposes but to increase the output of the stone quarry. Under such circumstances, it is my opinion that section 3298-20, General Code, would apply; and if it becomes necessary to levy a tax or to issue bonds to purchase such additional machinery a favorable vote of the people is a necessary incident and condition precedent to the levying of such tax or the issuance of such bonds. I do not wish to be understood as holding that Section 3298-20, General Code, applies to purchases of replacement machinery, which, because of later design and better construction, is more efficient than the old machinery which is being discarded, and thereby increases the output of the quarry, but that said section applies to purchases of additional machinery only. If the township trustees determine to issue bonds for the purpose of purchasing additional machinery for use in the stone quarry, the discussion above as to the effect of Section 2295-17, General Code, is also applicable.”

This office having strictly construed the sections of the General Code authorizing townships to expend public monies for the acquisition and operation of gravel pits or stone quarries, it is my judgment that an adherence to this precedent impels the conclusion that your second question may not be distinguished from that under consideration in Opinion No. 4339, supra. If a gravel pit *and* machinery may not be purchased without the question having been first submitted to the electors and authorized by them, even though sufficient available funds may be on hand for such purpose, it is my opinion that neither a gravel pit nor machinery to operate same may be so separately purchased.

Summarizing, I am of the opinion that:

1. The proceeds of bonds issued by a Board of Education under the provisions of House Bill No. 11 of the 3rd Special Session as amended by Amended House Bill No. 140 of the Second Special Session of the 90th General Assembly, are applicable to the payment of bonds of said school district which were due and unpaid on July 1, 1934 and not refunded except those bonds which were issued by it under the provisions of any Act passed by the 90th General Assembly prior to the effective date of said House Bill

No. 140, which bonds are in excess of the debt limitations that may be incurred.

2. Machinery to operate a gravel bank or pit, which gravel bank has been donated to the township for road purposes, may be purchased only pursuant to authority of the electors, notwithstanding the fact that sufficient available funds may be on hand for such purpose.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4640.

APPROVAL, CONTRACT FOR ELECTRICAL WORK FOR PROJECT KNOWN AS EXTENSION TO MAIN BUILDING AND SERVICE LINES, COLUMBUS STATE HOSPITAL, COLUMBUS, OHIO, \$5,191.00, UNITED STATES GUARANTEE COMPANY, SURETY—PAUL L. GILMORE COMPANY.

COLUMBUS, OHIO, September 7, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works for the Department of Public Welfare, and the Paul L. Gilmore Company of Columbus, Ohio. This contract covers the construction and completion of Contract for Electrical Work for a project known as Extension to Main Building and Service Lines, Columbus State Hospital, Columbus, Ohio, in accordance with Item No. 4 of the form of proposal dated July 31, 1935. Said contract calls for an expenditure of five thousand one hundred and ninety-one dollars (\$5,191.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board showing that such board has released funds for this project in accordance with section 1 of House Bill No. 69 of the second special session of the 90th General Assembly.

In addition, you have submitted a contract bond upon which the United States Guarantee Company of New York, New York, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated