examine this question, as the member or members of the board of education who had appointed themselves to the library board never became members of the library board, and the question of incompatibility could not arise.

You also state in your inquiry that the acts of the board of education in the Covington School District in hiring teachers have been questioned for the reason that the deciding vote in employing such teachers was cast by a member of the board of education who is also acting as trustee of the joint library board.

As I view the law, and especially in accordance with the decision of the case of State vs. Taylor, supra, the status of the board of education of the Covington School District has not been in any way affected by its attempted action to appoint its members as members of the board of trustees of the joint library board. In any event, its proceedings would be that of a de facto board, and would be perfectly valid, and its legal existence could not be collaterally attacked.

Specifically answering your questions:

1. The boards of education of Covington School District and Newberry Township School District can not appoint their members to membership, on a board of trustees, for the management of a joint library created under the provisions of Section 7633, General Code.

2. The fact that the Covington School District Board of Education has attempted to appoint certain of its members to membership on a board of trustees for the management of a library owned and operated by it jointly with another school district, and such member or members have been, and are now acting as such library trustees under an attempted appointment does not render the acts and proceedings of the school board invalid, even though such member participated in the proceedings of the board, and contracts entered into with teachers by such board, providing the provisions of law with reference thereto have been complied with, are valid.

Respectfully,
EDWARD C. TURNER,
Attorney General.

604.

BOARD OF EDUCATION—UNAUTHORIZED TO EXPEND IN EXCESS OF A BOND ISSUE UNLESS THE BOND LEGISLATION AND NOTICE OF ELECTION INDICATED THAT THE RESULTING IMPROVEMENT WOULD BE INCOMPLETE OR THAT OTHER SOURCES OF REVENUE WOULD BE UTILIZED IN THE COMPLETION.

SYLLABUS:

Where the electors of a school district have authorized a bond issue for a specific improvement, the board of education is without authority to expend in excess of the sum so authorized for the completion of such improvement, unless the bond legislation and notice of election indicated that the resulting improvement would be

incomplete or that other sources of revenue would be utilized in the completion thereof.

COLUMBUS, OHIO, June 13, 1927.

HON. E. A. BROWN, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

> "The Board of Education of Pickaway township, Pickaway county, Ohio, contracted for the improvement by way of a new building and remodeling the old, for the price of $58,000. The old indebtedness outstanding is $9,000. A new bond issue was voted by the electors of said school district, as provided by Section 7625 G. C. in the sum of $45,000. You will observe there is a deficiency, or will be, of approximately $13,000.
>
> Inquiry: Can the board of education of said school district issue bonds to complete the improvement without submitting the same to the electors as provided by Section 7629 G. C.?"

From your statement of facts the board of education has actually entered into contracts for the improvement in the aggregate sum of $58,000, whereas the bond issue voted by the electors only authorized the expenditure of $45,000. You further state that there is or will be a deficiency of approximately $13,000 and inquire whether the board may now issue bonds to complete the improvement without submitting the question of the issue to a vote of the electors.

The situation which you present is entirely unwarranted in law. I assume that the vote of the electors authorized the expenditure of $45,000 for this improvement complete and that no other source of revenue was contemplated. This is indicated by your statement that there will be a deficiency of approximately $13,000. Such being the fact, there was no authority whatsoever for the board to enter into contracts to the amount of $58,000. By so doing the will of the people, as indicated in their vote for the $45,000 bond issue, has been entirely disregarded. In this connection I call your attention to the case of *State ex rel vs. Andrews,* 105 O. S. 489, the fourth branch of the syllabus of which reads as follows:

> "When the voters of a county sanction the policy of building a county jail by voting a bond issue in an amount certain, the policy adopted is one involving the expenditure of no greater sum than that approved, and a building commission is without power to contract for such building under its adopted policy and plan involving an estimated expenditure of an amount in excess of that sanctioned by the voters."

As was said by Judge Hough in the opinion in that case, to hold otherwise would

> "mean either a useless expenditure of public funds or driving the citizens of Cuyahoga county into voting further bond issues to complete such building, in order to make of use and value their funds already expended."

The reasoning of that opinion is clearly applicable in this case, since I gather from your statement that the voters would be compelled to vote for an additional issue in order to complete the improvement which they already had indicated should be kept within the $45,000 limitation.

There is a further reason why any contracts entered into for the aggregate of $58,000 would be illegal. The legislature has seen fit to place strict safeguards around

the expenditure of public money. To that end, Section 5660 of the General Code has been enacted, which requires prior to the making of any contract by any public official, a certificate of the proper fiscal officer showing that the money required to meet the contract is in the treasury or in process of collection. The pertinent part of that section is as follows:

> "No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation, or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employee, commissioner, council, body or board, or the chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement or obligation or so long as the order is in force. Taxes and other revenues in process of collection or the proceeds to be derived from lawfully authorized bonds, notes, or certificates of indebtedness sold and in process of delivery shall, for the purposes of this section, be deemed in the treasury or in process of collection and in the appropriate fund."

From your statement that there now exists a deficiency and that the contracts have already been entered into in the aggregate sum of $58,000, I can reach no other conclusion than that either no certificate was obtained or that such certificate was not made in accordance with the facts. For this reason alone the proceedings would appear to be illegal.

If, however, you are incorrect in stating that the contracts have actually been entered into and the fact is that estimates merely have been received, which indicate a necessary expenditure of $58,000, a somewhat different situation is presented. Such a situation is too often met by this office in the examination of transcripts for bond issues of school districts. It is the duty of the board of education, before submitting to the voters the question of a bond issue, to know within reasonable limits the amount of money necessary to complete the improvement contemplated. While it is of course impossible to determine with mathematical accuracy the cost of an improvement of this character, yet, by obtaining estimates, a fair approximation can be reached and sufficient allowance made over and above such approximation to take care of contingencies. This should be the method pursued in determining the amount of the bond issue to be submitted to a vote of the electors.

Where, however, the authority of the electors has been obtained for the expenditure of a specific amount for a specific improvement, the board is without authority to expend upon that improvement more than the amount so authorized. This is clearly the rule since the enunciation of the supreme court in the case from which I have quoted.

From what I have said, you will observe that I am of the opinion that a board of education must confine its expenditures within the limitation as to amount authorized by a vote of the people for a specific improvement, but I believe it would be

entirely competent to submit the question of issuing a certain amount of bonds for a partial structure only, provided that the facts were clearly set forth in the bond legislation and in the notice of the election and ballots used. It would also be proper, in the event that there existed a sum in the building fund of the district available for the improvement, to issue bonds merely to augment the amount already available, provided this fact is made clear. I assume, however, that there was no indication in this case that the expenditure of the $45,000 would not complete the improvement. For this reason, I am of the opinion that the board of education, in the case you cite, is without authority to issue bonds without submitting the question to a vote of the electors in order to complete an improvement for which they have already been authorized to expend the sum of $45,000 only. In order to legalize the proposed expenditure it will be necessary to secure authority from the people by submitting the question of the issuance of the $13,000 additional bonds in such a way that the voters will be advised that this expenditure is to supplement the $45,000 expenditure originally authorized.

Respectfully,
EDWARD C. TURNER,
Attorney General.

605.

HOUSE BILL NO. 80—IS SUBJECT TO THE REFERENDUM—REFERENDUM DISCUSSED.

SYLLABUS:

Under the provisions of Section 1c *of Article II of the Ohio Constitution, House Bill No.* 80 *not being an act which is self-executing in providing for a tax levy is subject to the referendum and does not become effective until ninety days after it was filed in the office of the Secretary of State on May* 12, 1927, *which will be on and after August* 10, 1927.

COLUMBUS, OHIO, June 13, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

> "You are respectfully requested to advise this department when House Bill No. 80, enacted at the present session of the General Assembly became or will become effective. The question arises in our mind whether this is an act which under the constitution should become effective upon the filing of the same in the office of the Secretary of State or whether it is not effective until after the expiration of the period of ninety days."

Article II, Section 1d of the Ohio Constitution provides as follows:

> "Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. * * * "