

Note from the Attorney General's Office:

1964 Op. Att'y Gen. No. 64-1456 was overruled in part
by 1980 Op. Att'y Gen. No. 80-070.

OPINION NO. 1456**Syllabus:**

1. The proceeds or the interest on the proceeds of a bond issue for the purpose of constructing, equipping and furnishing school buildings, including the acquisition and improvement of sites therefor, remaining after the school buildings have been constructed, equipped and furnished, may not be used as a fund for repairs and improvements to such school buildings.

2. The unexpended balance from the proceeds of a bond issue, or from the interest on the proceeds, which is no longer needed for the purpose for which such bonds were issued must be used in accordance with Section 5705.14, Revised Code.

To: Homer B. Gall, Jr., Athens County Pros. Atty., Athens, Ohio
By: William B. Saxbe, Attorney General, October 13, 1964

I am in receipt of your request for my opinion which reads as follows:

* * * * *

"The following questions are hereby submitted for your opinion regarding a bond fund of the York High School in Athens County hereafter referred to as Bond Fund #1.

"Bond Fund #1 - This bond is one of a series of 1900 serial bonds of like tenor and effect, except as to maturity, numbered from 1 to 1900, both inclusive, all of said bonds being of the denomination of \$1000 each, aggregating in amount \$1,900,000 and issued for the purpose of acquiring and improving real estate for school purposes and constructing, equipping and furnishing fireproof school buildings, under authority of, pursuant to and in full compliance with the general laws of the State of Ohio, particularly Sections 133.01 to 133.48, inclusive, of the Revised Code, and Section 133.18 thereof, with the consent of the Department of Taxation and pursuant to the requisite majority vote of the electors of said School District cast at the special election held therein on August 19, 1958, upon the question of issuing bonds in said sum and the levying of a tax outside of tax limitations to pay the principal and interest of such bonds, and pursuant to a resolution duly passed by the Board of Education of said School District on the 23rd day of August, 1958.

"In regard to Bond Fund #1, when these bonds were sold, the money received was invested until the time it was needed and the interest received by the Board of Education is in the Fund in the amount of \$29,000. We have three questions regarding this sum.

"Question number one - May the Board of Education of the York School District use this money or portions thereof to insulate water pipes in the buildings constructed from the sale of the Bonds?

"Question number two - May the Board of Education of York School District use this money or portions thereof to purchase additional furniture which is needed as a result of increased enrollment?

"Question number three - May the Board of Education of York School District use this money or portions thereof to construct drainage ditches which are needed on the sites near the buildings constructed from the sale of these bonds?"

"The school does not have a sinking fund and in addition there is bonded indebtedness."

Section 133.10, Revised Code, provides:

"The resolution provided for in section 133.09 of the Revised Code shall relate only to one purpose. 'One purpose' includes, in the case of a county or township, any number of roads, highways, bridges, and viaducts; in the case of a municipal corporation, any number of streets, bridges, and viaducts, including the municipal corporation's share in streets to be improved in part by assessment; in the case of a school district, any number of school buildings; and in any case, all expenditures, including the acquisition of a site and purchase of equipment, for any one utility, building, or other structure, or group of buildings or structures for the same general purpose, or for one or more roads, highways, bridges, and viaducts included in the same resolution."

Section 5705.10, Revised Code, provides in material part:

* * * * *

"All proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest earned on money in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision.

* * * * *

It is apparent from these two statutes that a bond issue is limited to a single purpose, and that the bond proceeds and interest earned on the bond proceeds may only be used for this single purpose. The question here, then, is whether the specific expenditures proposed may be fairly said to be within the purpose for which these bonds were issued. This requires that initially consideration be given to the expressed purpose for this bond issue.

The purpose recited in your request is for "acquiring and improving real estate for school purposes and constructing, equipping and furnishing fireproof school buildings." I construe this purpose to encompass the construction, equipping and furnishing of fireproof school buildings, including the acquisition and improvement of real property for such school buildings. Admittedly the stated purpose for these bonds is capable of being construed as intended for the acquisition and improvement of real estate for school purposes and the construction, etc., of fireproof school buildings on real prop-

erty other than that purchased with the proceeds of this bond issue. In my opinion, however, this latter construction would mean that the resolution relates to more than one purpose and is in violation of Section 133.10, supra. See State, ex rel. Speeth v. Carney, 163 Ohio St., 159; Bearden v. Shaker Heights, 83 Ohio Law Abs., 314. I conclude, therefore, that the fund of \$29,000.00 in question may only be expended for the purpose of construction, etc., of fireproof school buildings, including the acquiring and improving of real property for such school buildings. This brings me to the specific questions you have raised.

You ask first whether this money may be used by the board of education to insulate water pipes in the buildings constructed with the proceeds from the sale of the bonds. The answer to this question is yes, if the insulation of these water pipes is a part of the original construction of the school buildings and not an improvement to the school buildings--the construction, equipping and furnishing having been completed. The reason is that there is a real difference between the construction and equipping of a building, and the repair and improvement of a building, and it is only the former which is included in the purpose for which the bonds were issued in this instance. If the purpose for which these bonds were issued has been accomplished any remaining balance is subject to the terms of Section 5705.14, Revised Code; it may not be used as a fund for improvements and repairs. Section 5705.14, Revised Code, provides to the extent material:

"No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

"(A) The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.

* * * * *

"(C) The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred, in the case of the sinking fund, to the bond retirement fund, and in the case of the bond retirement fund, to the sinking fund; provided that if such transfer is impossible by reason of the nonexistence of the fund to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county in which such division is located, may be transferred to any other fund of the subdivision.

* * * * *

What has been said with regard to your first question is

equally applicable to your second question. If the furniture proposed to be purchased is a part of the original furnishing of the school buildings--necessary perhaps because of an increase in enrollment over that projected at the time of the bond proposal--the funds in question may be used for its purchase. If, however, this additional furniture is sought because of an increase in enrollment after the school buildings have been constructed and furnished, these funds are not available for its purchase.

Your third and last question is may this money be used to construct drainage ditches which are needed on the sites near the buildings constructed from the sale of these bonds. Again, if these drainage ditches may be fairly said to be a part of the original acquisition and improvement of these school building sites this money may be used for their construction. It may not, however, be retained and used as a special fund to pay for improvements found desirable after the building sites have been acquired and improved and the buildings have been erected thereon and furnished.

In answer to your inquiry, then:

1. The proceeds or the interest on the proceeds of a bond issue for the purpose of constructing, equipping and furnishing school buildings, including the acquisition and improvement of sites therefor, remaining after the school buildings have been constructed, equipped and furnished, may not be used as a fund for repairs and improvements to such school buildings.
2. The unexpended balance from the proceeds of a bond issue, or from the interest on the proceeds, which is no longer needed for the purpose for which such bonds were issued must be used in accordance with Section 5705.14, Revised Code.