

2615

BUILDING TO HOUSE COUNTY OWNED ROAD MACHINERY—COUNTY COMMISSIONERS—WHEN COMMISSIONERS DETERMINE TO ERECT BUILDING AT COST IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS FROM FUNDS ON HAND AND AVAILABLE FOR PURPOSE, WITHOUT NECESSITY OF ISSUANCE OF BONDS OR TAX LEVY, PROVISIONS OF SECTION 2333 G. C. DO NOT APPLY—NOT NECESSARY TO SUBMIT QUESTION, EXPENDITURE OF FUNDS, TO ELECTORS NOR APPOINT BUILDING COMMISSION FOR ERECTION OF BUILDING.

SYLLABUS:

When county commissioners have determined to erect a building to house county-owned road machinery at a cost in excess of twenty-five thousand dollars from funds on hand and available for said purpose, without the necessity of the issuance of bonds or the levy of a tax therefor, the provisions of Section 2333, General Code, do not apply and it is not necessary to submit the question of the expenditure of such funds to the electors nor to appoint a building commission to take charge of the erection of such building.

Columbus, Ohio, December 20, 1950

Hon. Joel S. Rhinefort, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

You have requested my opinion relative to the application of Section 2333, General Code, in the construction of a building to house county owned road machinery, which request reads as follows:

“The Commissioners of Lucas County desire to erect a building to house county owned road machinery at a cost in excess of \$25,000. No bonds are to be issued and no levies are

to be imposed, the entire cost of the building to be paid out of funds now on hand and available for said purpose. Under these circumstances and in view of the provisions of General Code Section 2333, we would appreciate your opinion as follows:

1. It is mandatory to submit the question of the erection of said building to the voters of Lucas County?
2. Is it mandatory that a building commission be appointed to take charge of the erection of said building?"

Section 2333, General Code, referred to in your letter reads as follows:

"When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners shall apply to the judge of a court of common pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party."

In 1929 Opinions of the Attorney General, No. 543, Vol. II, p. 833, the then Attorney General considered, among others, the questions of expenditures by county commissioners in excess of \$25,000.00 for the construction of a new court house without submitting such question to the electors of the county and whether or not the fact that available funds on hand would reduce the requirement of new funds below \$25,000.00 would render it unnecessary to submit such question to a vote. The opinion was written on the assumption that the second question qualified the first and that it was necessary for the county to issue bonds in some amount in order to provide sufficient funds for the purpose. In reaching his conclusions in said opinion, however, reference was made to the question of submitting the question of such expenditure to the electors where no bonds were to be issued and at page 835 of the reported opinion said:

"In an opinion of this department, found in Annual Report of Attorney General, 1912, Vol. I, p. 194, Section 2333 was under consideration. It was held that a vote of the electors was indispensable in the event a county jail was to be erected to cost more than twenty-five thousand dollars, notwithstanding the fact that no bonds were to be issued for such purpose. The opinion was predicated upon Section 5638, General Code, which then

provided that county commissioners shall not 'appropriate money for the purpose of building county buildings, the expense of which will exceed \$15,000, without first submitting to the voters of the county the question as to the policy of making such expenditure.' The succeeding sections provided the detailed machinery whereby this question of policy could be submitted.

"All of these sections were repealed by the 87th General Assembly at the time of the enactment of the Uniform Bond Act. There is, accordingly, no machinery now in existence for the submission to the voters of the county of any question of the policy of expenditures. The only existing machinery for such submission is where bonds are to be issued and this procedure is outlined in the Uniform Bond Act. If the electors are only to pass upon the question where bonds are to be issued, no difficulty is encountered. I feel accordingly that the section as it now stands should be construed as requiring the submission to a vote of the electors of any bond issue, no matter what the size, provided the county commissioners are proposing to use the proceeds thereof in the construction of a court house, the total expenditures upon which will exceed \$25,000.00."

The 1912 opinion of this department, referred to in the above quoted portion of the text of the 1929 opinion of the Attorney General was rendered in response to a question almost identical to your second question and the conclusions of the then Attorney General, as disclosed by the syllabus of said opinion were as follows :

"Section 2333, General Code providing that the county commissioners, before erecting a county building in excess of \$25,000, shall submit the question of issuing bonds or levying tax to the electors, (and upon an affirmative result) for the application to the common pleas court and the appointment of a building commission, presents a patent ambiguity when applied to a case where the county has on hand a sufficient fund without a bond issue or levy.

Determining the intention of the statutes however, from the history of the present statute and from kindred sections wherein the commissioners are required to submit the question of 'appropriating funds' in excess of ten thousand dollars for other public buildings, it must be held that all other steps stipulated for in Section 2333 must be taken in the erection of a jail to cost over \$25,000 even though the specific step of issuing bonds and making a levy, be dispensed with. A vote of the electors upon the question of the erection, and a building commission are, therefore indispensable."

The reference in the second paragraph of said syllabus to "kindred sections" relating to "appropriating funds", as pointed out in the 1929 opinion relates to the then existing Section 5638 and its then succeeding sections of the General Code. In the course of the 1912 opinion, after quoting both Sections 2333 and 2334, General Code, the then Attorney General stated, at page 195 of said report:

"It seems to me that there is a patent ambiguity. These sections are consistent and clear enough, excepting as applied to the case when there is money available to construct a building without the making of a special levy or the issuance of bonds. As applied to such a case, they are meaningless. It would be a mere mockery to submit the question of issuing of bonds to the electors if it were not necessary to issue such bonds. It would be impracticable, indeed impossible, to pay the commissioners to erect the building any compensation out of the proceeds of an issue of bonds or a special tax, when there had been no issue of bonds or levy of special tax.

It would be possible to reconcile these ambiguities by adopting the construction that it was the Legislature's intention that in all cases in which the construction of a proposed building costs more than \$25,000. the county shall provide for the same by a special levy or levies, or by the issue of bonds. Indeed, the reading of Section 2333 seems to lead to such conclusion. I am satisfied, however, that there is still enough ambiguity in the section as codified to justify a resort to the preceding law. That law was section 1 of the act found in 98 O.L., 53, which provided in part as follows:

'That when the county commissioners of any county have determined under and by the authority of the statutes of the state of Ohio to erect a court house which shall cost to exceed twenty-five thousand dollars and after the question of issuing the bonds of said county for the construction of said court house or other county building has been submitted to a vote of the electors of the county, and said question has been determined by said electors in the affirmative, said county commissioners shall, within thirty days after said election has been held and the results thereof determined, apply to the judge of the court of common pleas for said county, who shall appoint four suitable and competent freehold electors of said county, and not more than two of whom shall be of the same political party, who shall, in connection with the county commissioners, constitute a building commission and who shall serve until the completion of said court house as contemplated herein. * * *.'

"It thus appears that in the original act, the provision respecting the submission of the question to the electors was jurisdic-

tional and not mandatory. That is to say, it was a condition precedent to the appointment of a building commission, and not an independent requirement. It is to be explained by reference to other statutes then in force. I refer, of course, to Section 2825, R.S., which, as in force at that time the act under consideration was passed, provided that when the cost of a public building exceeded ten thousand dollars, the commissioners should not levy any tax therefor without submitting the question as to the policy of building such edifice by general tax to the electors. While I do not hold, as a matter of law, that this election is the one referred to in the act of 1906, yet I cannot avoid the conclusion that the indirect way in which reference is made in that act to the vote of the electors indicate that the legislature must have had some such provision, independent of the act of 1906, in mind. I am, therefore, impelled to the conclusion that the act of 1906, of which Section 2333 of the General Code is a codification, did not, as enacted, of itself require a submission to the electors or the appointment of a commission in case the cost of a proposed public building exceeded twenty-five thousand dollars; but that the act was intended to apply only in case it was necessary to submit the question of the levy of the tax or the issuance of bonds to the electors under sections like Section 2825 R. S."

Being in agreement with the reasoning used in the foregoing opinions and in view of the fact that no provision presently exists for the submission to the voters of the county of any question of the policy of such expenditure I am of the opinion that the provisions of Section 2333, General Code, limiting the powers of county commissioners, do not apply where no bonds are to be issued or levies imposed to provide funds for the construction of county buildings, irrespective of the cost of such buildings.

Respectfully,

HERBERT S. DUFFY,
Attorney General.