

814.

BONDS—TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY,  
\$10,000.00.

COLUMBUS, OHIO, June 26, 1939.

*Retirement Board, State Public School Employes Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of Toledo City School District, Lucas County,  
Ohio, \$10,000. (Limited.)

The above purchase of bonds appears to be part of a \$2,000,000 issue of bonds of the above school district dated February 1, 1921. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission of Ohio under date of January 19, 1935, being Opinion No. 3844.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city school district.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

815.

ELECTION — CONTEST—COSTS INCURRED—HOW PAID—  
FROM COUNTY TREASURY BY COUNTY—IF ELECTION  
WITHIN AND FOR SUBDIVISION OF COUNTY—COSTS  
PAID SHALL BE WITHHELD BY COUNTY AUDITOR  
FROM MONEYS PAYABLE TO SUBDIVISION AT TIME  
OF NEXT TAX SETTLEMENT.

*SYLLABUS:*

1. *The costs incurred in an action to contest an election shall, if the results of such election be set aside, or if ordered by the court to be paid by the county as other election expenses are paid, be paid from the county treasury.*

2. *If such election is only within and for a subdivision of the county, the amount of costs so paid from the county treasury shall be withheld by the county auditor from the moneys payable to such subdivision at the time of the next tax settlement.*

COLUMBUS, OHIO, June 26, 1939.

HON. CHARLES S. KEENEY, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your letter of June 20, 1939, which reads as follows:

"I desire to have your opinion, as early as possible, on the following state of facts and querie.

*Statement of Facts*

On November 8, 1938, there was held, in conjunction with the regular election, a special election or vote upon the question of the sale of 3.2 beer in the incorporated village of Hamden, of Vinton County, Ohio.

As the result of the tabulation of the ballots on the issue voted upon, the County Board of Elections certified that the Drys won by a vote of 222 to 218.

Within the statutory time, a contest of the election on said issue, was filed and the litigation was carried to the Supreme Court of Ohio, where (see Bar Docket May 15, 1939, Jolly et al vs. Deeds) the Wets won by a count of 218 to 215.

The costs in the contest case amounted to One Hundred Forty Dollars (\$140.00) and were ordered paid by the Supreme Court in the language of General Code Section 4785-167—by Vinton 'County as other election expenses are paid.'

The election on said issue followed the filing of a regular petition by the requisite number of signers. Additional facts you may find in the statement of the reported case in the Supreme Court.

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Querie: Are the costs of the contest in the case aforementioned payable out of the general fund of the County and distributed generally or taxed against the whole County, or does the Election Board pay these costs and charge the same against the village of Hamden where the election on this issue was held?"

Section 4785-167 of the General Code, to which you refer in your letter and which provides for the filing of actions to contest elections, reads, with respect to the payment of costs in such actions, as follows:

"\* \* \* The contestor and the person whose right to the nomination or election to such office is being contested, to be known as the contestee, shall be liable to the officers and witnesses for the costs made by them respectively; but if the results of the nomination or election be confirmed or the petition

be dismissed, or the prosecution fail, judgment shall be rendered against the contestor for the costs; and if the judgment be against the contestee or if the results of the nomination or election be set aside then the county shall pay the costs as other election expenses are paid."

The payment of election expenses is provided for in section 4785-20 of the General Code, which reads in part as follows:

"The expenses of the board in each county shall be paid from the county treasury, in pursuance of appropriations by the county commissioners, in the same manner as other expenses are paid. If the county commissioners fail to appropriate an amount sufficient to provide for the necessary and proper expenses of the board, the board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. Payments shall be made upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor. The board of elections shall not incur any obligation involving the expenditure of money unless there are monies sufficient in the funds appropriated therefor to meet such obligations. Such expenses shall be apportioned among the county and the various subdivisions as hereinafter provided, and the amount chargeable to each subdivision shall be withheld by the county auditor from the monies payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year the board shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year.

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c. The cost of all special elections shall be charged against the subdivisions for and in which such elections are held.

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It will be noted that it is expressly stated in the above section that the expenses of the board shall be paid from the county treasury and shall be apportioned among the county and various subdivisions as therein provided.

Express provision is likewise made in paragraph c of said section for the cost of all special elections. This paragraph sets forth that the cost of special elections shall be charged against the subdivisions for and in which such elections are held.

Considering the provisions of the two sections above quoted, it would therefore appear and it is accordingly my opinion that:

1. The costs incurred in an action to contest an election shall, if the results of such election be set aside, or if ordered by the court to be paid by the county as other election expenses are paid, be paid from the county treasury.

.2 If such election is only within and for a subdivision of the county, the amount of costs so paid from the county treasury shall be withheld by the county auditor from the moneys payable to such subdivision at the time of the next tax settlement.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

816.

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COUNTY COMMISSIONERS—DO NOT HAVE AUTHORITY TO DO REPAIR WORK ON COUNTY BUILDING BY “FORCE ACCOUNT” — WITHOUT CONTRACT — WHERE REPAIRS MADE AND INDIVIDUAL PAID PERCENTAGE OF TOTAL PAYROLL—PAYMENT ILLEGAL—FINDING SHOULD BE MADE.

**SYLLABUS:**

1. *The term “force account” implies that the department officer or board having work to do, instead of entering into a contract for the performance of the work, assumes a direct oversight of the same, employing men with teams, purchasing material and paying for the same without reference to any contract whatever. (Opinion No. 857 of the Opinions of the Attorney General for 1917 approved and followed.)*

2. *The county commissioners do not have authority to do repair work on a county building by force account.*

3. *Where the county commissioners repair a county building by force account and pay to an individual for supervision of such repair work ten per cent of the total payroll expended, such percentage payment is illegal and a finding should be made against the individual who received same.*

COLUMBUS, OHIO, June 27, 1939.

*Bureau of Inspection and Supervision of Public Offices, State House Annex, Columbus, Ohio.*

GENTLEMEN: I have your request of recent date for my opinion which reads as follows:

“In a certain county, the county commissioners advertised for bids for repointing, caulking, and patching the stone court house building.