

1828.

SCHOOL BUILDING—DESTROYED BY FIRE—BONDS ISSUABLE FOR REBUILDING WITHOUT VOTE OF ELECTORS SUBJECT TO LIMITATIONS—SUBMISSION OF QUESTION OF BOND ISSUE AT NOVEMBER ELECTION—EXCEPTION—TIME OF MATURITY OF BONDS.

SYLLABUS:

1. *In the event a school building has been destroyed by fire, bonds may be issued for the purpose of rebuilding or repairing such building without a vote of the electors, subject to the limitations provided in Section 2293-15, General Code.*
2. *In the event it is determined to submit the question of issuing such bonds to the electors, such submission must be at a November election unless the Tax Commission consents to such submission at a primary or special election after finding that the requirements of the people of the subdivision so demand.*
3. *Bonds issued for the purpose of repairing or rebuilding a fireproof school building may not mature over a period exceeding twenty-five years, as provided in Section 2293-9, General Code.*

COLUMBUS, OHIO, May 6, 1930.

HON. D. H. PEOPLES, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The high school building of Tappers Plains School District was destroyed by fire about six weeks ago, and it is the desire of the Board of Education to issue bonds for a permanent fireproof building to cost near \$30,000.00. The total value of all taxable property is \$959,222.00 in said school district.

The school district has no outstanding indebtedness. Can the Board of Education issue bonds to rebuild this building without a direct vote of the people? Or can it be submitted to the voters by a special election? Also how long can the bonds run before maturity?

The State Tax Commission, so I am informed, has authorized the board to proceed and build this building.”

In answer to your first question, Section 2293-15, General Code, provides the limitations of indebtedness which may be created or incurred by a school district. It is therein provided that the net indebtedness so created or incurred without a vote of the people shall never exceed one-tenth of one per cent of the value of all property in such school district as listed and assessed for taxation. This limitation is subject to the provisions contained in paragraph c of the section which sets forth certain bonds which shall not be considered in computing this one-tenth of one per cent limitation. This paragraph is as follows:

“(c) Bonds heretofore issued under the provisions of Section 7630-1 or hereafter issued for the purpose of rebuilding or repairing a schoolhouse wholly or partially destroyed by fire or other casualty, or for the purpose of building a new schoolhouse in lieu of repairing or rebuilding such schoolhouse destroyed by fire or other casualty; provided that any insurance moneys received as a result of any such destruction are first applied to reduce the amounts of bonds issued for such repair, rebuilding or new construction, but bonds excepted from the limitation of this section under the provision of this paragraph (c) shall never exceed three per cent of the total value of all property in any such school district as listed and assessed for taxation.”

This section was under consideration in Opinion No. 456, rendered under date of May 28, 1929, the syllabus of which is as follows:

"1. When a schoolhouse has been destroyed by fire or other casualty, bonds may be issued for the purpose of building a new schoolhouse to take the place of the building so destroyed, without a vote of the people, to the extent of three per cent of the total value of all property in such school district as listed and assessed for taxation, under the provisions of paragraph (c) of Section 2293-15, General Code, providing there then exists no indebtedness previously so excepted.

2. The maximum amount of bonds which may be issued for the above purpose without a vote of the electors, at any time, under the provisions of Section 2293-15, General Code, would be three and one-tenth per cent of the total value of all property in such school district as listed and assessed for taxation, provided that, at such time, there is in existence no unvoted net indebtedness under the first paragraph of this section and further provided that, at such time, there is in existence no indebtedness previously excepted under paragraph (c) thereof."

Since the tax duplicate of the district in question is \$959,222.00 and since the district has no indebtedness, it follows that the maximum amount of bonds which may be issued for the purpose of rebuilding or repairing the schoolhouse destroyed by fire would be \$29,735.88, providing, of course, any insurance moneys received as the result of such destruction are first applied to reduce the amount of bonds issued for such purpose. Your attention is also directed to the fact that if bonds should be issued without a vote of the electors it will be necessary that the levy to meet the interest and principal requirements of the issue must be within the fifteen mill limitation, whereas if the issue is voted upon such levy would be outside the fifteen mill limitation. Sections 5625-6 and 2293-19, General Code.

Considering your second question, Section 2293-22, General Code, provides as follows:

"The question of issuing bonds shall always be submitted to popular vote at a November election, except that, whenever it is necessary to rebuild or repair public property, wholly or partially destroyed by fire or other casualty or to build a new similar property in lieu of repairing or rebuilding such property, with the consent of the Tax Commission of Ohio the question of issuing such bonds may be submitted to popular vote at a primary election or at a special election called for that purpose. The Tax Commission shall consent to such submission only if they find that the submission of such question at a primary or special election is absolutely necessary to meet the requirements of the people of said subdivision."

You state that the Tax Commission has authorized the board to proceed with the construction of the building in question. Under the provisions of this section, there is no authority to submit this question of issuing bonds at other than the November election unless the Tax Commission has consented to the submission of this question at a special election after finding that such submission is absolutely necessary to meet the requirements of the people of the subdivision.

In regard to the maximum maturities which may be provided for an issue of bonds to construct a building, this question is clearly disposed of by Section 2293-9, General Code. If the proposed building is to be fireproof, the maturities of the bonds issued for the construction of such building may not extend beyond a period of twenty-five years.

Specifically answering your questions, it is my opinion that:

1. In the event a school building has been destroyed by fire, bonds may be issued for the purpose of rebuilding or repairing such building without a vote of the electors, subject to the limitations provided in Section 2293-15, General Code.

2. In the event it is determined to submit the question of issuing such bonds to the electors, such submission must be at a November election unless the Tax Commission consents to such submission at a primary or special election after finding that the requirements of the people of the subdivision so demand.

3. Bonds issued for the purpose of repairing or rebuilding a fireproof school building may not mature over a period exceeding twenty-five years, as provided in Section 2293-9, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1829.

TRANSFER OF FUNDS—TOWNSHIP TRUSTEES UNAUTHORIZED TO
TRANSFER MONEYS FROM GENERAL FUND TO ROAD FUND—
EXCEPTION.

SYLLABUS:

The board of township trustees has no power to transfer funds from the township general fund to the township road fund except funds in the township general fund received by the township as its portion of inheritance taxes which may be transferred to the township road fund under authority of Section 5348-11, of the General Code of Ohio.

COLUMBUS, OHIO, May 6, 1930.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion reading as follows:

“Please advise the proper procedure to transfer funds from the Township General Fund to the Township Road Fund.”

To answer your inquiry it will be necessary first to determine whether township trustees have the power to transfer funds from the township general fund to the township road fund.

The township road fund is either the special fund described in Section 5625-9, subsection (d), General Code, (as amended in 113 O. L., 672) and composed of proceeds of special levies authorized by Sections 5625-6, subsection (g), (112 O. L. 394), 3298-15 (d), (107 O. L. 69 [79]), 3298-18 (as amended in 108 O. L., Pt. I, 478 [498]), General Code, or a special fund derived from revenues within the class defined by Section 5625-9, subsection (f), General Code.

Section 5625-13, General Code, as amended by the 88th General Assembly (113 O. L. 673), passed April 6, 1929, provides:

“No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:
* * *”

There is no authority contained in the provisions of Section 5625-13, General