

908.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING
OVER B. & O. TRACKS NEAR VILLAGE OF GLENDALE, IN HAMIL-
TON COUNTY.

COLUMBUS, OHIO, September 24, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This acknowledges your letter of September 16, 1929, enclosing a copy of a contract providing for the elimination of a grade crossing over the tracks of the Baltimore and Ohio Railroad Company on State (Inter-county) Highway No. 46, located south of the village of Glendale in Hamilton County, Ohio, and in which the board of county commissioners of Hamilton County is also a party.

I have carefully examined the agreement and find it correct in form and hereby approve the same.

Respectfully,
GILBERT BETTMAN,
Attorney General.

909.

TOWNSHIP TRUSTEES—AUTHORITY TO PURCHASE TOWNSHIP
HALL—BOND ISSUE SUBMITTED TO ELECTORS UNDER UNIFORM
BOND ACT.

SYLLABUS:

1. *Township trustees have authority by virtue of Section 3295, General Code, to purchase a township hall already constructed.*
2. *If funds are not available for such purpose, the question of issuing bonds therefor should be submitted to the electors in accordance with the provisions of the Uniform Bond Act.*

COLUMBUS, OHIO, September 24, 1929.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication which reads as follows:

“The township trustees of Windsor Township, Ashtabula County, desire to purchase from the Odd Fellows Lodge of that township a hall belonging to the Odd Fellows, to be used by the trustees as a township hall. The purchase price asked by the Odd Fellows is \$3,000.00, and I would like your opinion as to whether or not the same can be purchased by the trustees under General Code, Section 3395 and the following sections.

You will note in Section 3395, the specific language of the statute is ‘build, remove, improve or enlarge a town hall.’ The building in this particular case is already erected, but possibly by implication, this would fall within the terms of the statute.”

Supplementing the above communication I have been advised by you that the township trustees of Windsor Township, Ashtabula County, have no funds on hand

with which this purchase can be made and that the question has never been submitted to the electors of the township.

Section 3395, General Code of Ohio, to which you refer in your inquiry, and Section 3396, General Code, which I believe is pertinent, provide as follows :

Sec. 3395. "If in a township, it is desired to build, remove, improve or enlarge a town hall, at a greater cost than is otherwise authorized by law, the trustees may submit the question to the electors of the township, and shall cause the clerk to give notice thereof and of the estimated cost, by written notices, posted in not less than three public places within the township, at least ten days before election."

Sec. 3396. "At such election the electors in favor of such hall, removal, improvement or enlargement shall place on their ballots 'Town Hall—Yes,' and those opposed 'Town Hall—No.' If a majority of all the ballots cast at the election are in the affirmative, the trustees shall levy the necessary tax, but not in any year to exceed four mills on the dollar valuation. Such tax shall not be levied under such vote for more than seven years. In anticipation of the collection of taxes, the trustees may borrow money and issue bonds for the whole or any part therefor, bearing interest not to exceed seven per cent, payable annually."

It will be observed that the sections above referred to provide the method by which a township hall may be provided. There is nothing, however, in these sections which provides for the purchase of a building already constructed. Your attention is directed to more recent legislation relative to this subject. Section 2293-3, General Code, which is part of the Uniform Bond Act, provides in part as follows :

"The taxing authority of any subdivision shall have power to issue bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct."

Additional powers were granted to township trustees in this same Act as contained in Section 3295, General Code, which provides as follows :

"The trustees of any township in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish and equip a township hall, a township park, bridges and viaducts over streets, streams, railroads and other places where an overhead roadway or footway is necessary, and sites for any of the same."

It seems unnecessary to look further for authority of township trustees to acquire by purchase a township hall already constructed. In further consideration of your question, it appearing the township trustees do not have funds available for the purchase of a township hall, Section 2293-17, General Code, is pertinent and reads as follows :

"The net indebtedness created or incurred by a township, exclusive of the bonds excepted in Section 2293-13 of the General Code, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors."

Upon the statement of facts submitted in your letter, there being no funds available, it would appear that there should be submitted to the electors the question of issuing bonds for the purpose contemplated, in an amount which will cause the net indebtedness to be within the limitations set forth in Section 2293-17, supra. The entire procedure for submitting such question is outlined in the Uniform Bond Act.

In specific answer to your inquiry, I am of the opinion that township trustees have authority by virtue of Section 3295, General Code, to purchase a township hall already constructed. If funds are not available for such purpose, the question of issuing bonds therefor should be submitted to the electors in accordance with the provisions of the Uniform Bond Act.

Respectfully,
GILBERT BETTMAN,
Attorney General.

910.

SCHOOL DISTRICT—MONIES FROM PREVIOUS SPECIAL TAX LEVIES
COMMINGLED WITH GENERAL FUND—SURPLUS IN SUCH GEN-
ERAL FUND APPLICABLE FOR BUILDING AUDITORIUM.

SYLLABUS:

A surplus accumulated over a series of years in the general fund of a school district, may lawfully be expended for the building of a school auditorium, even though such accumulated surplus may consist in part of the proceeds of special tax levies which inadvertently have been placed in the general fund and thus become impossible of identification.

COLUMBUS, OHIO, September 24, 1929.

HON. ROY E. LAYTON, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion which reads as follows:

“I will thank you for your opinion on the following question:

The Goshen Township School District of Auglaize County, Ohio, has a centralized school located at the former village of New Hampshire, the territory of which village is also now included in said Goshen Township School District.

This centralized school also contains a high school of the first grade. Owing to a lack of room, in particular for athletics, state authorities are inclined to reduce the grade of this high school.

Some ten years ago the board of education passed a resolution providing for the levy of a tax in excess of the 15 mill limitation, which was voted upon favorably by the electors, and said tax was levied and collected. Some five years ago another resolution to the same effect was passed providing for another tax levy of three mills in excess of the 15 mill limitation for a period of five years, and this excess tax was also levied and collected. There is now a surplus of about \$10,000 in the general fund of this school district, and we may assume that some part of this surplus was the result of this excess tax levy, although various improvements were made in the school, which might