

1999.

BOARD OF EDUCATION—AUTHORITY TO ESTABLISH PERMANENT IMPROVEMENT FUND WITH BUREAU'S CONSENT BY TRANSFERRING MONEYS FROM GENERAL FUND—MONEYS PROVIDED YEARLY FOR SUCH FUND FROM GENERAL FUND.

SYLLABUS:

1. *A board of education may, with the approval of the Bureau of Inspection and Supervision of Public Offices, establish a permanent improvement fund for the purpose of acquiring or constructing any permanent improvement or improvements which the subdivision is authorized to acquire or construct by transferring to such fund moneys appropriated therefor from the general fund.*

2. *Moneys may be provided from year to year for such fund by appropriations from the general fund.*

COLUMBUS, OHIO, June 19, 1930.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio:*

DEAR SIR:—In a recent communication from your office the following inquiry is presented:

"The following situation has arisen in one of the rural school districts of this county:

After the budget of a rural school district had been allowed and certified by the Budget Commission, and due to an unexpected increase in the tax duplicate of the district, the revenue of the school district was increased beyond the amount set forth in the budget by some fifteen or twenty thousand dollars. Inasmuch as the board of education had ample revenue to operate its schools for the year, and anticipating certain permanent school improvements in the future it appropriated this excess in revenue to a permanent improvement fund, intending not to use it in the current year but to have it accumulate and possibly use it in the next four or five years.

Their question is: 'Can a rural school board create a permanent improvement fund which will carry over from year to year and to which might be appropriated additional amounts from year to year in order to create a fund sufficient to take care of a future anticipated permanent improvement in the school district, or must this excess in revenue be re-budgeted each year if allowed by the Budget Commission, and reappropriated to such purpose?'"

Before considering the question in general as to whether or not a board of education may create a permanent improvement fund such as you mention, it should be observed that there is some doubt as to whether or not a permanent improvement fund may be created in the specific manner set forth in your letter. I assume that the board has created this permanent improvement fund by appropriating the money in question from the general fund. Section 5625-13, General Code, provides in part as follows:

"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:

* * * * *

f. Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by Sections 5625-11 or 5625-12 of the General Code or to the proper fund of a district authority.

* * * ."

Paragraphs a, b, c, and d of this section contain no provisions for transferring money from the general fund to any other fund. Paragraph e provides for the transfer of money from the general fund to the sinking fund or bond retirement fund to meet deficiencies. It is apparent, therefore, that except as provided in paragraph e of this section money may only be transferred from the general fund of a school district to a fund authorized by Section 5626-11, General Code, since Section 5625-12 has no reference to school districts. Section 5625-11, however, provides:

“In addition to the funds provided for by Sections 5625-9 and 5625-12 of the General Code, the taxing authority of a subdivision may establish, with the approval of the bureau, such other funds as may be necessary and desirable, and may provide by ordinance or resolution that moneys derived from specified sources other than the general property tax shall be paid directly into such funds.”

Section 5625-9, General Code, lists the various funds which each subdivision shall establish. There is no provision of this section requiring the establishment of a permanent improvement fund such as you mention in your letter. It, therefore, follows that the transfer in question may be made from the general fund to a permanent improvement fund, providing, of course, the bureau may consent to the establishment of such a fund.

The provisions of Section 5625-11, *supra*, are very broad and with the approval of the bureau a board of education may establish not only such funds as may be necessary but such funds as may be desirable. Section 5625-13, General Code, in paragraph b, refers to a permanent improvement fund. It is as follows:

“b. The unexpended balance in any specific permanent improvement fund other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of a permanent improvement or improvements or, with the approval of the Court of Common Pleas of the county wherein such subdivision is located, to the general fund of the subdivision.”

There is here direct authority to transfer unexpended balances from any specific permanent improvement fund to a special fund for the acquisition of a permanent improvement or improvements, provided such money is not required to meet interest or principal requirements on outstanding bonds. While the Legislature has referred to this improvement fund as a “special fund,” the word “special” has been inserted to distinguish it from a specific permanent improvement fund necessary for a certain definite improvement. I am clearly of the view that under the provisions of Section 5625-11, *supra*, a special fund may be established for the acquisition or construction of such permanent improvements as a board of education may see fit from time to time to acquire or construct.

The foregoing views are strengthened by a consideration of the provisions of Section 7587-1, General Code, which is as follows:

“The board of education of any school district in this state may establish and maintain a replacement fund, and for that purpose, set aside annually out of its revenue such sum as it may determine necessary for said purpose. In case of total or partial destruction of any of the property of said board of

education from any cause or in case, because of the unfitness of such property, it becomes necessary at any time to demolish the same in whole or in part, such replacement fund may be used to rebuild, on the original site or elsewhere, or to restore, repair or improve the property so damaged, demolished or destroyed, and for said purpose the board of education may sell or use any of the securities or moneys of such replacement fund."

Having determined that a permanent improvement fund may be established by a board of education for the purpose of acquiring or constructing any permanent improvement or improvements which a subdivision is authorized to acquire or construct, it becomes necessary to consider the matter of levying a tax from year to year for the purpose of building up such a fund.

Section 5625-5, General Code, provides insofar as is pertinent as follows:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements. * * * ."

It is obvious that under the provisions of this section an item may be included in the general levy to provide for a special improvement fund as distinguished from a specific improvement fund. It must be borne in mind, however, that the total amount that may be raised by the general levy for current expenses which is paid into the general fund is subject to adjustment by the budget commission. Section 5625-24 provides that the budget commission shall adjust the estimated amount required from the general property tax for each fund so as to bring the levies within the limitations of the Budget Law.

Specifically answering your question, I am of the opinion that:

1. A board of education may, with the approval of the Bureau of Inspection and Supervision of Public Offices, establish a permanent improvement fund for the purpose of acquiring or constructing any permanent improvement or improvements which the subdivision is authorized to acquire or construct by transferring to such fund moneys appropriated therefor from the general fund.
2. Moneys may be provided from year to year for such fund by appropriations from the general fund.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2000.

BUILDING AND LOAN ASSOCIATIONS—LOANING PRIMARILY AND CONTINUOUSLY ON CHATTELS AS SECURITY SINCE JANUARY 1, 1913—AUTHORIZED TO CONTINUE SUCH LOANING.

SYLLABUS:

A building and loan association or a savings and loan association which has been making loans primarily and continuously since January 1, 1913, upon chattels as se-