

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3363.

LEGISLATIVE ENACTMENT — MANDATORY — WHEN CODE RECOGNIZED AS STANDARD ADOPTED — INTENT TO ADOPT EXISTENT CODE AT TIME STATUTE ENACTED — OHIO STATE BUILDING CODE — NATIONAL BOARD OF FIRE UNDERWRITERS 1923 NATIONAL ELECTRIC CODE — SEE SECTION 12600-35 G. C.

*SYLLABUS:*

1. *The legislature, when referring to a code adopted by a private agency recognized as a standard authority, in enacting legislation, intends to adopt such code in general use and in existencce when the adopting statue is enacted.*

2. *Section 12600-35, General Code, which is one of several sections in Part II, Title 1 of the Ohio State Building Code, which provides that all materials and installation shall be in strict accordance with the National Board of Fire Underwriters 1923 National Electric Code, is mandatory.*

3. *When the 1923 National Electric Code was adopted by reference in the enactment of Section 12600-35, General Code, the provisions of such National Electric Code must be adhered to although such provisions are now obsolete.*

COLUMBUS, OHIO, December 13, 1938.

HON. O. B. CHAPMAN, *Director, Department of Industrial Rlations, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date which reads as follows:

"I respectfully petition your office for an official opinion on the following matters. Section 12600-35 of the Ohio General Code, and continued in the Ohio State Building No. 102 covering Theaters and Assembly Halls, reads as follows:

'Sec. 12600-35. Electrical Work. All materials and installations shall be in strict accordance with the National Board of Fire Underwriters 1923 National Electric Code. \* \* \*'

In my opinion the General Assembly had in mind the National Electric Code, but many materials approved at the time of the 1923 edition are no longer being manufactured and we believe, therefore, that the latest issue of the National Fire Underwriters Code should be followed. Further, to our knowledge there has not been printed for distribution copies of the National Board of Fire Underwriters 1923 National Electric Code for the past twelve and one-half years. Naturally there is quite a bit of confusion among ourselves, architects and engineers on this subject, especially with all the new buildings contemplated and being built.

Therefore, shall the Division of Factory and Building Inspection continue to adhere to the obsolete 1923 Code or confine its decisions and requirements to the present up-to-date National Electric Code."

Section 12600-35, General Code, to which you refer, is one of many sections found in Part 2, Title I of the Ohio State Building Code, wherein the General Assembly provided special requirements for the design, construction and equipment of theaters and assembly halls. Section 12600-281, General Code, imposes upon the Chief Inspector of Workshops and Factories, together with such other officials therein mentioned, the duty to enforce the provisions of the Ohio State Building Code. Under Section 871-11, General Code, the Department of Inspection of Workshops and Factories as a separate state department was terminated and the duties of the Chief Inspector of Workshops and Factories were imposed upon the Industrial Commission. When the administrative code was enacted in 1921, the General Assembly authorized the Department of Industrial Relations to perform all duties vested by law in the Industrial Commission with certain exceptions enumerated in Section 154-45, General Code. The power to enforce the Ohio State Building Code was not included as one of the exceptions in Section 154-45, General Code, and by reason thereof the Department of Industrial Relations has the authority to enforce the provisions of such building code.

The question presents itself whether or not the Department of Industrial Relations must require strict compliance with the provisions of the "National Board of Fire Underwriters 1923 National Electric Code" to which the General Assembly referred when adopting Section 12600-35, General Code, or may such department authorize compliance with the

requirements of the present national electric code by reason of the fact that the 1923 code is obsolete.

The General Assembly in enacting laws will frequently refer to other statutes and incorporate such statutes as part of the adopting legislation. In some cases, as in the present one, reference is made to a code adopted by a private agency which code is in existence at the time the adopting legislation is enacted. Such method of legislation is recognized and in the absence of constitutional restrictions, is approved by the courts of this state. *State, ex rel. Fritz vs. Gongwer*, 114 O. S. 642. The purpose of this method of legislation is to avoid encumbrance of the statute books by unnecessary repetition. The general effect of legislation by reference is stated in 37 O. Jur. 339, as follows:

“When in one statute a reference is made to an existing law in prescribing the rule or manner in which a particular thing shall be done or for the purpose of ascertaining powers with which persons named in the referring statute shall be clothed, the effect generally is to revive or continue in force the statute referred to not for the purposes for which it was originally enacted, but merely for the purpose of carrying into execution the statute in which the reference is made. The law referred to is, in effect, incorporated with, and becomes a part of, the one in which the reference is made as fully as if the former had been repeated verbatim in the latter and, so long as that statute continues, will remain a part of it. The power conferred by the reference statute is the same power conferred by the statute referred to and is subject to the same limitations stated in the proviso of the latter section.”

In 37 O. Jur. 341, the following text appears in connection with the effect of a subsequent amendment or repeal of a statute which is adopted by reference:

“It is a general rule that when a statute adopts a part or all of another statute, domestic or foreign, general or local, by a specific and descriptive reference thereto the adoption takes the statute as it exists at that time. The subsequent amendment or repeal of the adopted statute has no effect on the adopting statute, unless it, also, is repealed expressly or by necessary implication. The same result has been reached in an early supreme court case in Ohio in regard to a reference statute referring, not to a specified statute, but to the law generally governing a particular subject. However, the general rule in

other states is that when the adopting statute makes no reference to any particular statute or part of statute by its title or otherwise, but refers to the law generally which governs a particular subject, the reference in such a case includes not only the law in force at the date of the adopting act, but also, all subsequent laws on the particular subject referred to—so far, at least, as they are consistent with the purposes of the adopting act. The latter rule has been followed in Ohio in a case in which the reference was to general laws then in force, or which might thereafter be enacted, and in a case in which the reference was generally to an original act and to supplementary and amendatory acts. Sometimes express provision is made in the reference statute to cover such a situation."

In Opinions of the Attorney General for 1932, Vol. III, page 1403, the subject of legislation by reference was discussed and the then Attorney General held as set forth in the first two branches of the syllabus as follows:

"1. The adoption in an act of the legislature of the whole or a portion of another act or statute by specific reference, adopts the law as existing at the time of the adoption and does not include subsequent amendments of the statute or act so adopted unless by express or strongly implied intent.

2. Where, however, the adopting statute makes no reference to any particular act or statute by its title or otherwise, but refers to the general law regulating the subject in hand, the reference will be regarded as including not only the law in force at the time of the adopting act but also the law in force when action is taken or proceedings are resorted to."

It is quite apparent from the above authorities that when the 1923 National Electric Code was adopted by reference in the enactment of Section 12600-35, General Code, the General Assembly adopted the provisions of the 1923 National Electric Code as they existed at the time of the adoption and did not include subsequent amendments or changes in such Electric Code.

Several sections of Part II, Title 1, of the Ohio State Building Code were considered by the court in the case of *State, ex rel. Myers vs. Industrial Commission*, 105 O. S. 103. Although the specific section mentioned in your letter was not one of those sections considered by the court in the above case, it is my opinion that the reasoning and the conclusions adopted by the court are applicable to the question under consideration in this opinion in so far as the determination of the court that

the "special requirements" of the building code are mandatory. Section 12600-277, which is one of the many general provisions of the Ohio State Building Code, prior to its amendment in 110 O. L. 350, provided among other things that where the use of another fixture, device or construction was desired at variance with what is described in the "special requirements" of the Building Code, plans, specifications and details should be furnished to the proper state and municipal authorities for examination and approval and if the proper authorities were satisfied that the fixtures, device or construction proposed answered "to all intents and purposes the fixtures, device or construction" described in the Building Code, such authorities were authorized to approve same. The question considered by the court was whether or not the Department of Industrial Relations could, by reason of the general provisions found in Section 12600-277, General Code, approve certain fixtures, devices or construction at variance with those described in the "special requirements" of the Building Code. The court, in concluding that the Department of Industrial Relations could not excuse compliance with the special requirements of the Building Code which were mandatory in nature, held as disclosed by the third branch of the syllabus:

"There is no ambiguous or indefinite language in Sections 12600-1, 12600-3, 12600-5 and 12600-77, or the General Code, being parts of the Ohio building code, 102 Ohio Laws, 586 et seq., and the provisions of those sections are mandatory, and, being parts of the 'special requirements' of the Ohio building code, the department of industrial relations of the State of Ohio does not by virtue of the general provisions of Section 12600-277, General Code, have authority to substitute other performance in place of the special requirements of those sections."

The General Assembly in 1923 amended Section 12600-277, General Code, and eliminated that portion which authorized the Department of Industrial Relations to approve other construction than that stated in the special requirements. It would seem that the amendment of Section 12600-277 leaves no doubt that compliance with the provisions of Section 12600-35, General Code, which is mandatory in nature, cannot be excused by the Department of Industrial Relations.

A situation similar to the one under consideration in this opinion was considered by the Supreme Court in the case of *State of Ohio vs. Emery*, 55 O. S. 364. The Pure Drug Statute referred in one of its sections to the "United States Pharmacopoeia". In the prosecution against Emery, the question arose whether or not the United States Pharmacopoeia, which is a book generally used by pharmacists and druggists in the United

States and recognized as a standard authority in existence and general use at the time the Pure Drug Statute was enacted, was to be considered, or whether a United States Pharmacopoeia in existence at the time of the prosecution which was at variance with the one in existence at the time of the adoption of the statute was to be considered. The court concluded that the "United States Pharmacopoeia" referred to in the Pure Drug Statute under consideration in that case was the edition in general use and in existence when the statute was enacted and not some later edition of such Pharmacopoeia. At page 369, the court said:

"The reference in the statute to the United States Pharmacopoeia, could be to no other than the edition of the book in use and recognized when the statute was enacted and went into effect, which was the edition known as that of 1880. It is not to be supposed that the legislature intended to adopt, by reference, as part of the penal laws of the State, an edition of the book not then in existence, and of the contents of which the legislature could then have no knowledge."

It is not the function of this office or of the courts of this state to be concerned with the wisdom of legislation, and it would seem that if your department desires to adhere to the present National Electric Code, proper legislation be submitted to the General Assembly for the purpose of amending Section 12600-35, General Code, so that materials and installation shall be required to be in compliance with the later Electric Code rather than the one mentioned in that section.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3364.

APPROVAL, BONDS, EDINBURG TOWNSHIP RURAL SCHOOL DISTRICT, PORTAGE COUNTY, OHIO, \$35,000.00, DATED OCTOBER 15, 1938.

COLUMBUS, OHIO, December 13, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Edinburg Township Rural School Dist.,  
Portage County, Ohio, \$35,000.00 (Unlimited)