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BOND ISSUE, COUNTY—TO ACQUIRE SITE AND ERECT BUILDING FOR COUNTY HOSPITAL—PROCEEDINGS PRIOR TO SUBMISSION OF QUESTION OF ISSUANCE OF BONDS TO ELECTORS OF COUNTY AND BALLOT USED AT ELECTION —PURPOSE OF ISSUE—TO ACQUIRE SITE AND ERECT BUILDING FOR COUNTY HOSPITAL—NO PART OF PROCEEDS FROM SALE OF BONDS MAY BE USED TO EQUIP HOSPITAL.

## SYLLABUS:

Where a county issues bonds for the purpose of acquiring a site and erecting a building for a county hospital and the proceedings of the bond issuing authority prior to the submission of the question of the issuance of such bonds to the electors of the county and the ballot used at the election thereon state the purpose of the issue to be "acquiring a site an (and) erection of a building for a county hospital", no part of the proceeds from the sale of bonds issued pursuant to such proceedings may be used for the purpose of equipping such hospital.

Columbus, Ohio, April 19, 1949

Hon. Benson L. Owens, Prosecuting Attorney  
Jackson County, Jackson, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"At the last general election an issue was submitted to the voters of Jackson County, Ohio, proposing a five hundred thousand (\$500,000.00) dollar bond issue for the purpose of 'acquiring a site and erection of a building for a County Hospital.' The vote on said issue was favorable. The number voting for the bond issue being more than required under the terms of the applicable statute.

The question now arises whether or not the proceeds of the bond issue can be partially used for the purpose of equipping the hospital as well as for the purpose of acquiring the site and erection of the building."

The construction of county hospitals is authorized by Section 3127 et seq., General Code, and special provision is made therein for financing the

cost of original construction, the manner in which the necessary funds therefor may be provided and the disposition of such funds when provided. The sections and portions of sections pertinent to your question are as follows:

Section 3131:

“If a tax levy or bond issue for such purpose is approved by vote of the electors in the manner provided by law, the deputy state supervisors of elections for such county shall certify the result of such election to the governor of the state; whereupon the governor shall, within ten days after the receipt of such certification, appoint a board of county hospital trustees, composed of four freeholders of such county. \* \* \*

Such hospital trustees shall serve until such hospital be fully completed and sufficiently equipped for occupancy, whereupon their successors shall be appointed as hereinafter provided.”

Section 3132:

“Such board of trustees shall have full charge and control of the selection and purchase of a site for such hospital (taking title thereto in the name of the county,) the selection of plans and specifications, the determination and erection of all necessary buildings thereon, and of the selection and installation of all necessary and proper furniture, fixtures and equipment therefor. \* \* \*”

Section 3134:

“All funds arising from a special tax levy or bond issue for the purchase, appropriation or construction of such county hospital, and contributions thereto, shall be placed in the county treasury to the credit of a fund to be known as the ‘County Hospital Fund.’ And such fund shall be paid out on the order of said board of county hospital trustees, certified by the chairman and secretary thereof.”

Section 3135:

“Before making a contract for the expenditure of money on any structure or improvement in excess of one thousand dollars, the hospital trustees shall advertise according to law for bids, and cause plans, specifications and detailed drawings to be distributed among the bidders.”

## Section 3136:

“When said hospital shall have been fully completed and sufficiently equipped for occupancy as hereinbefore provided, the county commissioners shall appoint a board of four trustees as follows: \* \* \*”

It will thus be seen that under the express terms of these statutes it is required that all funds arising from a voted tax levy or voted bond issue for original construction, or from contributions, shall be placed in the county treasury to the credit of a fund to be known as the “County Hospital Fund,” and paid out on the order of a hospital board appointed by the Governor and that the hospital board is authorized to take full charge and control of selecting the site and erect and equip the necessary buildings therefor. Since the proceeds from the sale of the bonds issued pursuant to the authorization of the voters of your county must, by the terms of the foregoing statutes, be placed in the treasury of your county to the credit of a “County Hospital Fund” to be paid out on order of the board of county hospital trustees, and since the hospital trustees, also, by the terms of the foregoing statutes, have the power and authority to select and install all the necessary and proper furniture, fixtures and equipment for such hospital building there would be no prohibition against such trustees’ use of the proceeds of the sale of such bonds for the purpose of equipping such hospital unless such prohibition be contained within the terms of other sections of the General Code.

Bonds issued under authority of the above mentioned County Hospital Law must be in conformity with the provisions of the Uniform Bond Act, Section 2293-1 et seq. of the General Code, the purpose of which Act, as stated in the title of the original enactment thereof, 112 Ohio Laws, page 364, was “To revise and codify the laws relating to the issuance of bonds by political subdivisions \* \* \*.” The pertinent sections of the General Code, relating to the question herein discussed, are as follows:

## Section 2293-9:

“The maturities of bonds, notes or other evidences of indebtedness issued by any subdivision shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments:

When issued for

“\* \* \* Class (B) The acquisition of real estate or easements or other interests in real estate, grade crossing elimination, and flood prevention, thirty years;

“Class (C) The construction or improvement of fireproof buildings or other structures other than those in connection with general waterworks improvements, widening, opening, extending or changing the line of roads, highways, streets or alleys, sanitary and storm sewers, sewage disposal works, and bridges, twenty-five years; \* \* \*

“Class (E) Water meters, fire apparatus, road rollers, furniture and furnishings, machinery in garbage disposal plant, landscape planting, playground apparatus, sidewalks, curbs, gutters, and the construction, resurfacing, grading, or drainage of roads, highways, streets or alleys, or improvements thereof by boulevard or white-way lighting system, ten years; \* \* \*

“Class (I) A single bond issue for a purpose which includes two or more of the foregoing classes, the average number of years of usefulness as measured by the weighted average of the amounts proposed to be expended for said several classes in accordance with the above table of maturities; such estimating and calculation of average to be made by the fiscal officer.”

Section 2293-10:

“Before any resolution, ordinance or other measure providing for the issuance of bonds, notes or other evidences of (certificates of) any subdivision is passed or adopted, the fiscal officer thereof shall certify to the bond issuing authority the maximum maturity of such bonds or indebtedness, calculated in accordance with the provisions of the foregoing section, and no such bonds, notes or other evidences of indebtedness shall be authorized or issued with maturities extending beyond the maturities as thus certified by such fiscal officer. Where the proposed indebtedness falls within class (h), such certification shall also contain a schedule of the respective amounts of the proposed bonds falling within each of classes (a) to (g) inclusive. The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class shall not exceed the amount allotted in said schedule to said class; provided, however, that whenever the bond issuing authority deems such transfer to be necessary for the carrying out of the purpose of the bond issue, then such authority may transfer any unexpended portion of the amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may

be made from any class to a class with a shorter maturity. Each such certification by the fiscal officer shall state whether or not the asset, property, construction or improvement has an estimated life or usefulness of at least five years."

Section 2293-29:

"\* \* \* The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds are issued and sold and used only for the purpose set out in the resolution or ordinance of the taxing authority, and all moneys from premiums and accrued interest, shall be paid into the sinking fund or bond retirement fund from which said bonds or notes are to be redeemed. \* \* \*"

It will thus be seen that in accordance with the provisions of Sections 2293-9 and 2293-10 the fiscal officer in his certificate of estimated life and average maturity of the bonds to be issued must set forth the amount to be expended for the purpose or purposes of such issue as well as the estimated life of the class or classes of improvements intended to be made. Where such proposed improvement includes more than one class he must compute a weighted average life of the proposed improvement based on the amounts intended to be used for each class and the estimated life of each class. The maturity dates of bonds issued thereunder cannot exceed such weighted average life of the improvement.

By the express terms of Section 2293-29, while reciting that the principal from the sale of bonds issued in conformity with the act shall be credited to the fund on account of which the bonds are issued and sold, it is specifically directed that such proceeds shall be used only for the purpose set out in the resolution or ordinance of the taxing authority. A further restriction on the use of the proceeds is set forth in Section 2293-10 limiting the amount expended from the proceeds for the purpose or purposes falling within any specific class of improvement to the amount allotted in the schedule provided for in said section, and providing an exception thereto whereby the bond issuing authority may transfer unexpended balances in any class to another class containing a longer maturity. Such transfer to any class containing a shorter maturity is therein prohibited.

As a result of the provisions of Section 2293-10 and 2293-29 a bond issuing authority by its resolution or ordinance and by the certification of its fiscal officer, in effect, appropriates from the fund into which the proceeds of the principal of any bonds issued by it is paid, for the specific purpose set forth in such resolution or ordinance, the respective amounts

provided in the fiscal officer's certificate. Section 3134 of the General Code designates the fund in which such issue is to be paid, thereby conforming to the provision of Section 2293-29 by specifically naming the "fund on account of which the bonds are issued and sold." While the provisions of the County Hospital Act give the county hospital trustees the power and authority to equip a hospital and disperse funds out of the "County Hospital Fund", in the absence of a specific statement therein that any or all moneys therein shall be used for any purpose which such trustees have authority to accomplish such trustees would be limited in their use of such fund to the specific purpose or purposes for which such moneys were paid into the fund. The provisions of the Uniform Bond Act restricting the uses of the proceeds of the principal of a bond issue to the purpose or purposes set out in the resolution or ordinance would, therefore, prevent the use of such funds by the trustees for any other purpose.

It will be noted further that if bonds were issued as described in your letter and a portion of the funds used for purposes having a shorter estimated life than those set forth in the fiscal officer's certificate that the intent and purpose of Section 2293-10 would be nullified. In such event the weighted average life of the improvements resulting from the use of the proceeds would be less than the maximum maturity established for the bonds issued.

In answering your question, since the ballot stated the purpose of the bond issue to be "acquiring a site an (and) erection of a building for a county hospital," I am assuming that all resolutions of the issuing authority prior to the submission of the question to the electors contained the same purpose of the bond issue. It is my opinion, therefore, that no part of the proceeds of the sale of bonds issued under these proceedings may be used for the purpose of equipping the county hospital when erected.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.