

1715.

MEMORIAL BUILDING—TOWNSHIP TRUSTEES—PROCEDURE FOR
BOND ISSUANCE.

SYLLABUS:

1. *Township trustees are not authorized to issue bonds for the erection of a memorial building on a petition of a majority of the voters of the township and levy a tax within the fifteen mill limitation to pay the interest on and retire such bonds at maturity.*

2. *The proper procedure for issuing such bonds is found in Sections 3410-1 to 3410-11, inclusive, and in The Uniform Bond Act, specifically, Sections 2293-19, et seq., General Code.*

COLUMBUS, OHIO, February 16, 1928

HON. W. J. JONES, Prosecuting Attorney, McArthur, Ohio.

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication, which reads as follows:

“Please advise me if the trustees of a township could erect a memorial building under provisions of Section 5625-6 of the General Code of Ohio, providing that if a majority of the voters of the township petitioned for the erection of a memorial building. In other words, can the trustees issue bonds within the limitations of this statute for the erection of a memorial building on a petition of the majority of the voters of the township?”

The reference to Section 5625-6, General Code, in the above communication is undoubtedly to the following portion of that Section:

“The following special levies are hereby authorized without vote of the people:

a. For any specific permanent improvement which the subdivision is authorized by law to acquire, construct or improve, or any class of such improvements which could be included in a single bond issue.

* * *

Each such special levy shall be within the fifteen mill limitation and shall be subject to the control of the county budget commission as provided by this act.

* * *”

Section 5625-6, General Code, is a part of the new budget law, House Bill No. 80 of the 87th General Assembly, which contains no authority to issue bonds. The authority for issuing the bonds in question is found in Sections 3410-1 to 3410-11, inclusive, General Code, subject to the provisions of House Bill No. 1 of the 87th General Assembly (112 O. L. 364) known as The Uniform Bond Act. Section 3410-1, General Code, provides:

“Whenever there is presented to the trustees of a township, or townships, a petition signed by not less than fifteen per cent. of the electors of such township or townships as shown at the last preceding general election held therein, requesting the submission to the electors of such township or townships of the question of issuing bonds in an amount not exceeding

\$100,000 for the purpose of purchasing a site, if necessary, and erecting and furnishing a memorial building, or erecting a suitable and appropriate monument, statue or memorial to commemorate the services of the soldiers, sailors and marines of such township or townships and of maintaining same, the trustees shall provide by resolution for the submission of such question to the electors of such township or townships at a special or the next general election.

In case the petitions are filed in two or more townships requesting the submission of such question the total amount of bonds estimated for such purpose shall be divided among such townships in proportion to the tax valuation of such townships as shown by the tax duplicate."

Section 3410-2, General Code, was amended in The Uniform Bond Act (112 O. L. 364-384) and, as amended, reads:

"The question of issuing such bonds shall be submitted to the people of the township or townships in the manner provided by law."

Section 3410-1, *supra*, makes it mandatory upon the township trustees, upon the presentation to them of a petition signed by not less than fifteen per cent of the electors of such township or townships, as shown at the last preceding general election held therein, requesting the submission to the electors of such township or townships of the question of issuing bonds in an amount not exceeding \$100,000.00 for the purpose of purchasing a site, if necessary, and erecting and furnishing a memorial building, to submit the question of issuing such bonds to the electors.

There is no provision in the statutes as to whether or not the township trustees may, on their own initiative and without the presentation to them of a petition signed by fifteen per cent of the electors, submit the question of issuing such bonds to the electors, or as to whether or not township trustees may proceed to issue bonds for the erection of a memorial building without submitting the question of issuing such bonds to the electors.

If I understand your question correctly, it may be stated as follows: May the township trustees issue bonds for the erection of a memorial building, without a vote of the people, but upon the petition of a majority of the voters of the township and levy a tax to pay the interest on and retire said bonds within the fifteen mill limitation, as provided in Section 5625-6 of the General Code.

Your attention is directed to the provisions of Section 2293-17, General Code, enacted by the 87th General Assembly as a part of The Uniform Bond Act (112 O. L. 364, 372) which provides 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."

Section 2293-13, General Code, referred to in Section 2293-17, *supra*, provides the manner in which the net indebtedness of a subdivision shall be calculated and provides that certain bonds shall not be considered in calculating such net indebtedness. The only bonds exempted by Section 2293-13, General Code, which a township is authorized to issue, are special assessment bonds. It is clear, there-

fore, that even if Section 3410-1, General Code, did not require the submission of the question of issuing bonds for the construction of a memorial building to the voters of a township, such submission would be necessary under the provisions of Section 2293-17, *supra*.

Bond elections are now controlled by the provisions of The Uniform Bond Act (112 O. L. 364) and, specifically, by Sections 2293-19, et seq., General Code, as enacted in said Uniform Bond Act. Without setting out said Sections in full, they require that when the taxing authority of any subdivision is required to submit any bond issue to the electors, it shall pass a resolution declaring the necessity of such bond issue and fixing the amount, purpose and approximate date, interest rate and maturity, and also the necessity of the levy of a tax outside of the fifteen mill limitation to pay the interest on and to retire said bonds. This resolution must be certified to the county auditor at least sixty days prior to the election, who is required to calculate the average annual levy throughout the life of the bonds which will be required to pay the interest on and retire such bonds, and certify the same to the taxing authority more than fifty days prior to the election. Thereafter, and more than forty days prior to the election, the taxing authority must certify its resolution, together with the average tax levy estimated by the county auditor, to the Deputy State Supervisors of Elections of the county, who are required to prepare the ballots and make the necessary arrangement for the election. Notice of the election is required to be published in one or more newspapers of general circulation in the subdivision once a week for four consecutive weeks prior thereto, and the form of ballot to be used at the election is set out in Section 2293-23, General Code. This form of ballot also contains a provision for the levying of taxes outside of the fifteen mill limitation, as estimated by the county auditor.

Answering your question specifically, it is my opinion that township trustees are not authorized to issue bonds for the erection of a memorial building, without a vote of the people, on petition of a majority of the voters of the township, and provide for levying a tax within the fifteen mill limitation to pay the interest on and retire such bonds at maturity. On the contrary, the question of issuing such bonds must be submitted to the electors of the township at a November election, in accordance with the provisions of Sections 2293-19, et seq., General Code, which requires a majority of fifty-five per cent of those voting upon the proposition in order to carry the same. If the provisions of Sections 2293-19, et seq., General Code, have been followed and the necessary fifty-five per cent majority has been obtained, the township trustees are authorized to proceed to issue the bonds and to levy a tax outside of the fifteen mill limitation to pay the interest on and retire the bonds at maturity.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

1716.

SCHOOL BUILDING—CONSTRUCTION UNDER URGENT NECESSITY—
 DEFAULTING CONTRACTOR.

SYLLABUS:

Where the original contractor, on a contract for the construction of a school building, defaults on his contract, and where the condition of the building is such