

ion is unnecessary. The original contract, as approved, does not seem to be with the files now submitted, but the main change seems to be in the matter of indemnity against claims arising from the construction or use of the side tracks and other such claims occasioned by insufficient clearance of buildings, fences or other structures.

In view of the laws in such cases, relating to the extent of financial responsibility of the state in such matters, it is not believed that the changes made in this contract will change the conclusion announced upon its original submission, and it is therefore approved.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1721.

DISAPPROVAL, REFUNDING BONDS OF HARRISON TOWNSHIP  
RURAL SCHOOL DISTRICT IN AMOUNT OF \$2,600.

COLUMBUS, OHIO, December 18, 1920.

*Industrial Commission of Ohio, Columbus, Ohio.*

RE Refunding bonds of Harrison Township Rural School District in the amount of \$2,600.00, 4 bonds of \$500 each and 1 bond of \$600—6%.

GENTLEMEN:—I have examined the transcript of the proceedings of the board of education of Harrison Township Rural School District, Paulding county, relative to the bonds above described and decline to approve the validity thereof for the following reasons:

The transcript reveals that the indebtedness which the school district seeks to refund by the issuance of the bonds under consideration was incurred in installing a heating system, necessary seats and other equipment in the centralized school building.

Sections 5650 and 5661 G. C., under authority of which the board of education seeks to issue said bonds, provide as follows:

“Sec. 5660. The commissioners of the county, the trustees of a township and the board of education of a school district, shall not enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the appropriation or expenditure of money, unless the auditor or clerk thereof, respectively, first certifies that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose; money to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purpose of this section, be deemed in the treasury and in the appropriate fund. Such certificate shall be filed and forthwith recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, is fully discharged from the contract, agreement or obligation, or as long as the order or resolution is in force.”

"Sec. 5661. All contracts, agreements or obligations, and orders or resolutions entered into or passed contrary to the provisions of the next preceding section, shall be void, but such section shall not apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers, and other school employes of boards of education."

If the provisions of section 5660, which are mandatory, in terms, have been complied with the funds to the amount of the contract price of the cost of installing said heating system, necessary seats and other equipment should of necessity have been in the hands of the treasurer of the school district and should have been applied in payment of such contractual obligations when due, unless such funds were subsequently lost or misappropriated. I am therefore unable to understand by what process of reasoning the school district officials have reached the conclusion which is expressed in the bond resolution that such indebtedness constitutes "an existing, valid and binding obligation" of such school district. The mere fact that the board of education by a formal resolution has made a declaration to that effect does not change the character of the transaction or sanction the validity of the so-called obligations.

The board of education might have borrowed money and issued bonds of the school district for the improvement mentioned under authority of section 7629 G. C. or of section 7625 et seq. G. C. It does not, however, follow that the board can proceed without legal authority and even in direct violation of the mandatory provisions of section 5660 G. C. to contract for the payment of money for improvements and then cure the illegality of such action by their own subsequent declaration or determination.

Upon the information furnished in the transcript, I am of the opinion that the obligations referred to in the bond resolution are not valid and binding obligations of the school district and that the board of education is without authority to issue bonds under section 5656 G. C. to secure funds for the purpose recited.

I therefore advise that the commission decline to accept said bonds.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*