

to Section 4761, General Code, on account of being a later enactment. In the per curiam opinion by Marshall, C. J., it is said at page 616:

"We have no difficulty in determining that the two preceding sections, 2916 and 2917, were particularly eliminated, so far as school boards are concerned in the employment of counsel, provided such counsel is paid not from county funds but from the school funds.

* * * * *

We are only concerned with the power of the board of education of Delaware county to employ and pay for the services of an attorney other than the prosecuting attorney. Sections 2916 and 2917 are expressly eliminated, and we are of the opinion that 2918, having been enacted at a later date than 4761, becomes an exception thereto."

It is obvious that the foregoing decision of the Supreme Court is at variance with the former opinions of this office with respect to the power of boards of education of either city, village or rural school districts to employ counsel other than the prosecuting attorney or city solicitor. Your specific request relates to the employment of counsel to pass on the legality of a transcript of proceedings leading up to the issuance of bonds. In view of the fact that boards of education are authorized to employ counsel other than the prosecuting attorney to represent the board in litigation as decided by the Knepper case, it follows that counsel may be employed for the purpose mentioned in your inquiry.

Specifically answering your inquiry, it is my opinion that under authority of *Knepper vs. French*, 125 O. S. 613, a board of education of a city, village or rural school district may employ attorneys other than the city solicitor or prosecuting attorney to pass upon the legality of a transcript of proceedings relating to the issuance of bonds, providing such attorneys are paid by the board of education from the school fund.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1393.

BOND RETIREMENT FUND—UNEXPENDED BALANCE THEREIN
 TRANSFERABLE TO GENERAL FUND OF SUBDIVISION WHEN.

SYLLABUS:

1. *An expended balance remaining in the bond retirement fund may, with the approval of the court of common pleas, be transferred to the general fund of a subdivision when such subdivision has no sinking fund and after all indebtedness, interest and other obligations for the payment of which the bond retirement fund exists have been paid and retired.*

2. *The approval of the court of common pleas of such transfer should be sought by a written application addressed to the court and filed with the clerk thereof and the court's approval should be evidenced by an entry granting the same.*

COLUMBUS, OHIO, August 12, 1933.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“One of the school boards of Wood county has funds in its bond retirement fund with all bonds fully paid and none outstanding, nor are there any obligations due or to become due from the school board to be paid out of the sinking fund.

1st Question:

Can such balance remaining in the bond fund be transferred to the general fund upon the approval of the Common Pleas Court under Section 5625-13 of the General Code, subsection C, and in accordance with the opinion of the Attorney General's Office on June 15, 1932, Opinion No. 4422; as it will be necessary to use these funds before the expiration of the coming school year?

2nd Question:

If the transfer is authorized upon approval of the Common Pleas Court what procedure should be followed in obtaining the Court's permission?

Should I follow the former procedure provided for in Sections 2296 to 2302, inclusive, which was repealed in 1927, or is all that is necessary, inasmuch as the Code has not provided as to how the notice should be given to anyone opposing the transfer, to simply file my petition setting up the resolution authorizing the transfer by the board and showing the necessity for the same, and then take a decree in default of any protest after answer date is due?

Or is it legal for the board if it finds it necessary for the general operating expenses of the school to issue notes or certificates of indebtedness and retire the notes or said certificates directly from the bond retirement fund under subsection C of Section 5625-9 and thus do away with a court proceeding. Said section is as follows: ‘Bond retirement fund for the retirement of serial bonds or of notes or certificates of indebtedness.’”

The opinion of this office to which you refer held as disclosed by the syllabus:

“The unexpended balance in a special tax levy fund of a subdivision may be transferred to the subdivision's general fund, provided such money is not required to meet the obligations payable from the sinking fund or bond retirement fund of the subdivision, and the transfer of the same has the approval of the court of common pleas of the county wherein such subdivision is located.”

This opinion is not, in my judgment, responsive to your inquiry, since it is predicated upon the provisions of paragraph b of Section 5625-13, General Code. As you indicate in your letter, authority for the proposed transfer is contained in paragraph c of this last mentioned section, which provides as follows:

“c. The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations

for the payment of which such fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision."

The foregoing provisions with respect to the transfer of unexpended balances in the bond retirement fund after all indebtedness, interest and other obligations for the payment of which such fund exists have been paid and retired, are clear and unambiguous and it accordingly follows that your first question must be answered in the affirmative.

You next inquire as to what procedure should be followed in obtaining the approval of the court of common pleas of such transfer. You refer to sections 2296 to 2302, both inclusive, General Code, as in force and effect prior to repeal by the 87th General Assembly. These sections provided a detailed method of procedure for securing the approval of the court of common pleas for the transfer of funds of certain subdivisions. Provision was made for the filing of a petition, giving notice thereof by publication, hearing of objections thereon, certificates of findings, orders and judgments of the court, and appeal. It is a well established rule of statutory construction that when the legislature expressly repeals certain provisions of law, it intends to do away with their requirements. Since no specific procedure is provided in Section 5625-13, whereby the approval of the court may be secured, it would be proper practice to file with the clerk of common pleas an application for the court's approval of the transfer, which application, together with a journal entry granting approval, should be presented to the court for consideration.

These views as to procedure are strengthened by a consideration of the provisions of House Bill No. 492 of the 90th General Assembly, filed in the office of the Secretary of State as an emergency act June 9, 1933, being an act authorizing certain transfers of public funds of a subdivision in addition to those authorized by Section 5625-13, General Code, but excepting the proceeds or balances of bond issues or special levies for the payment thereof. This act provides for the filing of a petition in the court of common pleas and sets forth detailed procedure very similar to that heretofore set forth in Sections 2296 to 2302, General Code. It is obvious that in cases where the legislature has seen fit to require certain proceedings in securing the approval of the court with respect to transfers, it has made provision therefor. This is a clear application of the maxim *expressio unius est exclusio alterius*.

In your letter you refer to Section 5625-9, General Code, which section requires subdivisions to establish certain funds, among which is the bond retirement fund "for the retirement of serial bonds, or notes or certificates of indebtedness". This section does not authorize the issuance of notes or certificates of indebtedness. Authority to issue such instruments must be found elsewhere in the General Code. There is no general authority for issuing notes or certificates of indebtedness to take care of general operating expenses of a subdivision. Section 2293-4, General Code, being one of the sections of the Uniform Bond Act, authorizes subdivisions to borrow in anticipation of the next semi-annual tax settlement; House Bill No. 394 of the 89th General Assembly, as amended by Amended Senate Bill No. 8 of the 89th General Assembly, special session, au-

thorizes the issuance of deficiency bonds under the conditions therein set forth; Amended Senate Bill 152 and Senate Bill 412 of the 90th General Assembly authorize school boards to issue notes in anticipation of state aid; and Amended Substitute Senate Bill No. 175 of the 90th General Assembly authorizes school districts to issue indebtedness funding bonds; but none of these special provisions whereby bonds or notes may be issued and the proceeds used directly or indirectly for current operating expenses, would appear to properly effectuate the transfer of the funds in question from the bond retirement to the general fund. This office has taken the position that under Section 11, Article XII of the Constitution, when notes are issued, as well as bonds, except in the case of the issuance of notes under Section 2293-4, General Code, provision must be made to meet their interest and principal requirements by general taxation.

Summarizing and in specific answer to your inquiry, it is my opinion that:

1. An unexpended balance remaining in the bond retirement fund may, with the approval of the court of common pleas, be transferred to the general fund of a subdivision when such subdivision has no sinking fund and after all indebtedness, interest and other obligations for the payment of which the bond retirement fund exists have been paid and retired.

2. The approval of the court of common pleas of such transfer should be sought by a written application addressed to the court and filed with the clerk thereof and the court's approval should be evidenced by an entry granting the same.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1394.

APPROVAL, LEASE TO CANAL LAND, IN ROSS COUNTY, CHILLICOTHE, OHIO, FOR GENERAL BUSINESS BUILDING, YARD AND STORAGE PURPOSES—WALTER W. BOULGER.

COLUMBUS, OHIO, August 12, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your communication of even date herewith, submitting for my examination and approval, a canal land lease in triplicate, executed by you in your official capacity, to Walter W. Boulger of Chillicothe, Ohio.

By this lease, which is one for a stated term of fifteen years, and which provides for an annual rental of \$1500.00, payable in semi-annual installments of \$750.00 each, there is leased and demised to the lessee above named, for General Business Building, Yard and Storage purposes, that portion of the abandoned Ohio Canal property in the city of Chillicothe, Ross County, Ohio, commencing at the westerly line of Mulberry Street, in said city, and extending thence westerly and northerly over and along said abandoned Ohio Canal property, including the full width thereof, a distance of 7,473 feet more or less, to a line thirty feet north-easterly from and parallel to the center line of the main track of The Baltimore and Ohio Southwestern Railroad, where the same crosses over said