

195.

LIBRARY TRUSTEES—BOARD IS AUTHORIZED TO ISSUE BONDS FOR  
BUILDING ON LAND NOT OWNED IN FEE SIMPLE.

*SYLLABUS:*

*A board of library trustees, organized under Sections 7635 to 7640-1 of the General Code, is authorized to issue bonds under the provisions of Sections 4007, et seq., of the General Code, for the purpose of erecting a building on land not owned in fee simple, but held on a long term lease.*

COLUMBUS, OHIO, March 16, 1927.

HON. HERBERT S. HIRSHBERG, *State Librarian, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“A library board organized under Sections 7635 to 7640-1 of the General Code wishes to know whether it is possible for the board to issue bonds under Sections 4007 et seq. of the General Code and apply the same to the erection of a building on land not held by them in fee simple but leased for a long term without cost or at a nominal rental. We should appreciate your opinion on this question.”

Section 7638 of the General Code is as follows:

“By a two-thirds vote of its members such library board may purchase or lease grounds and buildings, and erect buildings for library purposes. It also may appropriate land for library purposes if the owner and the board cannot agree upon terms, and dispose of land, when in its opinion it is no longer needed for library purposes. Conveyances made by the board shall be executed in its name by its president and secretary. \* \* \* \* \* ”

It is to be noted that this section expressly authorizes not only the purchase but also the leasing of grounds for library purposes. This section has been directly construed by our Supreme Court in the case of *City of Cleveland vs. Library Board*, 94 Ohio St., 311. On pages 319 and 320 is found the following language:

“Section 7638, General Code, confers still broader authority upon the library board. It authorizes the board to purchase or lease grounds and buildings and erect buildings for library purposes. This section is a direct answer to the contention that the library board has no authority to accept a deed for land upon which to erect a library building that contains conditions for the reversion of the title to the grantor, when the property shall cease to be used for library purposes; for, if it may lease or purchase grounds for this purpose, it necessarily follows that it may acquire any estate in land upon which it proposes to erect a library building, from a leasehold to a fee simple title inclusive, and whatever title it acquires is acquired in the name of the library board as required by Section 7637, General Code.”

The only remaining question is, therefore, whether there is any limitation upon this power found in Section 4007, General Code, which authorizes the issuance of bonds by a public library board. That section is in the following language:

"Any public library board charged by law with the title, custody, control and maintenance of a public library in the state, may issue bonds, with interest coupons attached, to provide buildings for the public library in their charge, and to furnish them, and to pay the cost and expense thereof. In anticipation of the income from such taxes levied from time to time as occasion requires, the board may issue and sell bonds, bearing interest payable semi-annually at a rate specified therein not to exceed five per cent per annum, and in such sums and at such times as the board determines, which bonds shall be numbered consecutively, made payable to the bearer, and be signed by the president and secretary of the board and denominated 'public library bonds of the \_\_\_\_\_ library' (naming the one to provide and furnish buildings for which they are issued)."

This constitutes express authority for the issuance of bonds for the construction of a library building. There is no language used which can be construed as restricting this right to the erection of a building upon land owned in fee. Considering the power therein granted, together with the authority conferred by Section 7638 of the General Code above quoted, I have no difficulty in reaching the conclusion that a library board may issue bonds under authority of Sections 4007, et seq., General Code, for the purpose of erecting a building on land not held by the board in fee simple.

I direct your attention to the fact that Section 4012 of the Code requires that the question of the issuance of bonds shall be submitted to the voters of the district at a general or special election and must be approved by a majority of the voters voting thereon. Since the enactment of Sections 5649-9a, et seq., General Code, such sections have been regarded as controlling the procedure in the submission of any bond issue to a vote of the people. In submitting the question to such a vote care should be used to see that all of the provisions of Sections 5649-9a, et seq., are fully met.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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DISAPPROVAL, BONDS OF MARLBORO TOWNSHIP RURAL SCHOOL DISTRICT, STARK COUNTY, OHIO—\$60,000.00.

COLUMBUS, OHIO, March 16, 1927.

Re: Bonds of Marlboro Township Rural School District, Stark County, \$60,000.00.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—An examination of the transcript for the above bond issue discloses that the bond sale was advertised for three weeks, commencing on January 29, 1927. The sale occurred on February 17, 1927.

Section 2294, General Code, requires the advertising to be for three consecutive weeks. The uniform interpretation of this kind of a statute is that it requires publication for the full twenty-one days. In this instance publication was for only nineteen days.

The Supreme Court of Ohio in the case of *State of Ohio vs. Kuhner and King*, 107 O. S., 406, held that advertising provisions of the statute must be strictly complied with and where advertising is required for a given number of weeks there must