

3937.

DISAPPROVAL, BONDS, PEMBERVILLE VILLAGE SCHOOL DISTRICT,
WOOD COUNTY, \$12,000.00.

COLUMBUS, OHIO, January 8, 1927.

Re: Bonds of Pemberville Village School District, Wood County, \$12,000.00.

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

GENTLEMEN:—An examination of the transcript submitted for the foregoing issue of bonds discloses that said bonds were advertised for sale for three weeks, beginning on July 8, 1920 and were sold on July 26, 1920.

In the case of State of Ohio vs. Kuhner and King, 107 O. S., page 406, the court held as follows:

“The requirement of section 1206, General Code, that ‘the state highway commissioner shall advertise for bids for two consecutive weeks,’ is mandatory, and the contract entered on June 14 for advertisement in two weekly newspapers of the county on June 6th and June 13th is invalid.”

As the construction placed upon this statute will necessarily apply to section 2294 G. C. for the sale of bonds, I am compelled to hold that these bonds have not been advertised and sold as required by statute and by the decision of the court, and you are therefore advised not to accept the same.

Respectfully,

C. C. CRABBE,

Attorney-General.

3938.

APPROVAL, BONDS, CLARIDON AND HUNTSBURG TOWNSHIP, GEAUGA
COUNTY, \$15,900.00.

COLUMBUS, OHIO, January 8, 1927.

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

3939.

TAX LEVY FOR BOND ISSUE—UNDER SECTION 7669 G. C. AMOUNT
RAISED FOR ERECTION OF JOINT DISTRICT HIGH SCHOOLE NEED
NOT BE IN PROPORTION TO TAX VALUATION OF DISTRICT—CON-
TRIBUTION FOR MAINTENANCE MADE BY RESPECTIVE DIS-
TRICTS—SINKING FUND.

SYLLABUS:

1 Under section 7669 of the General Code the amount raised by a tax levy or bond issue for the purpose of erecting a joint district high school need not be in proportion to the tax valuation of the respective districts.

2. When the question of a tax levy has been submitted to the voters of the respective districts under section 7669 of the General Code, and such vote has carried, in both districts, neither district may thereafter change the basis of distribution to the purchase of a site and the erection of a building for such joint district union high school.

3. The contribution for maintenance to be made by the respective districts must be in proportion to the tax valuation of such districts, and the boards of education of such districts are without authority to agree on any other basis for maintenance.

4. Funds derived from a bond issue under section 7669 and not used for that purpose must be placed in the sinking fund and used for the retirement of such bonds, and the tax levy for the retirement of such bonds may be discontinued to the extent that the interest and sinking fund charges for the retirement of such bonds are provided for by the funds so placed in the sinking fund.

COLUMBUS, OHIO, January 8, 1927.

HON. J. CARL MARSHALL, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter as follows:

"The Yellow Springs Village School Board and Miami Township School Board decided to establish a joint high school, and the question of the bond issue in an equal amount from each district, to purchase a site and to build a high school building, was submitted as provided in section 7669 G. C. and carried in each district. The bonds were sold. Plans and specifications accepted and paid for. All joint obligations to date have been paid. The Township Board refuses to proceed further in the joint project since the Township Board claims that it is inequitable for the Township Board to pay one-half of the building costs and one-half of the expense of operating, when the township district only furnishes one-third of the students, the other two-thirds coming from the village district. The value of the duplicate of each district is so near equal that each board would necessarily be required to defray about one-half of the expenses. Section 7671 G. C. provides for the funds.

Question: Can the Yellow Springs Village vote an additional issue of bonds, for the purpose of building the joint high school, in such an amount that the districts would be participating upon a one-third and two-thirds basis, instead of a fifty-fifty basis? Can the two school districts enter into a maintenance arrangement that would be legal on any other basis than that provided for in section 7671?

If the boards of the participating districts should dissolve as provided in section 7671-2 G. C., could the participating district authorize a discontinuance of the levy to redeem the bonds and redeem the bonds as they come due, from the proceeds of the bonds which have been sold? If this could be done then the village, we have reason to believe, would start anew and submit the question of issuing bonds to repair their old school building, which is said to be the worst in the state, or to build a new building of its own."

Section 7669 of the General Code, relating to the union of districts for high school purposes, provides:

"The boards of education of two or more adjoining school districts, by a majority vote of the full membership of each board, may unite such districts for high school purposes. Each board also may submit the question of levying a tax on the property in their respective districts for the purpose of purchasing a site and erecting a building, and issue bonds, as is provided

by law in case of erecting or repairing school houses, but such question of tax levy must carry in each district before it shall become operative in either. If such boards have sufficient money in the treasury to purchase a site and erect such building, or if there is a suitable building in either district owned by the board of education that can be used for a high school building it will not be necessary to submit the proposition to vote, and the boards may appropriate money from their funds for this purpose."

It will be noted that no provision is made in this section as to the relationship that shall exist between the tax levies made by the school districts which have joined for high school purposes. That is left to the discretion of the boards uniting for such high school purposes and to the vote of the electors to whom the question of levying the tax is submitted.

Section 7671 makes provision for the maintenance and support, and reads as follows:

"The funds for the maintenance and support of such high school shall be provided by appropriation from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts, which must be placed in a separate fund in the treasury of the board of education of the district in which the school house is located, and paid out by action of the high school committee for the maintenance of the school."

This section clearly defines the basis on which appropriations for the support of the joint high school shall be made by the respective boards of education, and neither board of education is authorized by law to make appropriations on any other basis. This disposes of your second question.

With reference to your first question, it seems clear that while the law does not make any provision as to the proportion between the contributions of the several districts for the erection of a high school building, yet when the question has been submitted to a vote of the people in each district, boards of education are limited by the authority received by virtue of that vote, and it is very doubtful whether either of the districts can subsequently enter into the contract on another basis. The vote in each district is predicated upon the vote being taken in the other district, and it would be impossible to say in any particular case whether the electors of said district would have approved the arrangement had the proportions been different from the proportions as originally submitted. Whether an action of the board providing for an additional levy and an additional issue of bonds, if already carried out and put into effect, would be disturbed by a court may be somewhat in question, but it is clear that the safer course to pursue before any obligations have been entered into, if it is desired to build the building on any other basis than that submitted, would be to submit the question again to the electors of both districts on the basis which the boards of education of the districts, in the exercise of their discretion, consider proper.

In making this suggestion we do not wish it to be inferred that we are passing upon the question of whether said board of education which is now desiring to withdraw from the arrangement can do so without a dissolution of the joint district.

In specific answer therefore to your first question, in view of the doubt as to the authority of the board, you are advised that additional bonds may not be issued by either of the respective districts except upon the re-submission of the question provided by section 7669.

Your third question is as to the effect of a dissolution of the districts upon the levies authorized in the respective districts.

Section 5654 of the General Code provides:

“The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund.”

Therefore, it is clear that if the purposes for which the bonds were issued cannot be carried out, the proceeds of the sale of the bonds should be placed in the sinking fund of the school district, and to the extent that the proceeds are sufficient to provide for the payment of the interest and principal of the bonds, the levy may be discontinued. It should be borne in mind that the bond holders have a constitutional right to a levy sufficient to retire these bonds to the extent that the proceeds of the bond issue already in the sinking fund are insufficient.

Respectfully,

C. C. CRABBE,

Attorney-General.