

1104.

BONDS—SCHOOL DISTRICTS—DUTY OF TAX COMMISSION.

SYLLABUS:

When the Tax Commission is requested to consent to the submission to popular vote of the question of a bond issue by a school district, in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, said Commission, before giving or refusing its consent, should consider among other things:

- (a) The necessity for said proposed bond issue, in the light of the financial condition of the school district.*
- (b) The legality of said proposed bond issue.*
- (c) The complete financial data and details as to the proposed issue of bonds, and*
- (d) Whether the interest and retirement charges of the proposed issue of bonds will be unreasonably burdensome on the people of said district.*

The Tax Commission taking these and other pertinent facts into consideration, should then determine, in the exercise of a reasonable discretion, whether or not it will consent or refuse to consent to permit the question of the issuance of the bonds to be submitted to the electors.

COLUMBUS, OHIO, October 4, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN :—This will acknowledge receipt of your recent communication which reads :

“The Tax Commission of Ohio respectfully requests you to render an opinion to it regarding the interpretation of Section 2293-15 of the General Code, with respect to the duty, discretion and authority of the Tax Commission in connection with the above noted section.

A question has arisen with reference to the authority of the Commission in granting or withholding its consent to the taxing authorities of any subdivision in submitting to the voters of said district the question of a bond issue. The section states that such question shall not be submitted ‘unless the Tax Commission of Ohio consents thereto.’ This is the clause which we should like to have interpreted.”

Section 2293-15 of the General Code was enacted by the 87th General Assembly in House Bill No. 1, entitled, An act to revise and codify the laws relating to the issuance of bonds by political subdivisions by enacting supplemental Sections 2293-1 to 2293-37, amending certain sections and repealing various sections of the General Code. Said act become effective August 10, 1927.

Said Section 2293-15, General Code, as enacted, 112 Ohio Laws, page 370, reads as follows :

“The net indebtedness created or incurred by any school district without a vote of the people shall never exceed one-tenth of one per cent of the total value of all property in such school district as listed and assessed for taxation.

The net indebtedness created or incurred by any school district shall never exceed six per cent of the total value of all property in any such school district as listed and assessed for taxation provided that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, unless the tax commission of Ohio consents thereto.

In ascertaining the limits of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered :

(a) Bonds issued prior to April 29th, 1902, or to refund, extend the time of payment of, or in exchange for bonds issued prior to April 29th, 1902.

(b) Bonds heretofore issued to meet deficiencies in the revenue which at the time of issuance were not required by law to fall within any debt limitation.

(c) Bonds heretofore issued under the provisions of Section 7630-1 or hereafter issued for the purpose of rebuilding or repairing a schoolhouse wholly or partly destroyed by fire or other casualty, or for the purpose of building a new school house in lieu of repairing or rebuilding such schoolhouse destroyed by fire or other casualty; provided that any insurance monies received as a result of any such destruction are first applied to reduce the amounts of bonds issued for such repair, rebuilding or new construction, but bonds excepted from the limitation of this section under the provisions of this paragraph (c) shall never exceed three per cent of the total value of all property in any such school district as listed and assessed for taxation."

This section limits the net indebtedness that may be created or incurred in any school district without a vote of the people not to exceed one-tenth of one per cent of the total value of all property in said school district as listed and assessed for taxation.

Said section also limits the net indebtedness that may be created or incurred by any school district to six per cent of the total value of all property in any such school district as listed and assessed for taxation with the provision that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, unless the Tax Commission of Ohio consents thereto. Inasmuch as the consent of the Tax Commission of Ohio is necessary before said bonds can be submitted to popular vote it is evident that the question of the necessity and advisability of issuing said bonds should be considered by the Tax Commission. It is also evident that the Tax Commission of Ohio, inasmuch as the duty and burden rests upon said Commission, would not consent to an issue of bonds by the school district and the creation of debt without determining the necessity therefor. The consent of said Tax Commission must be obtained as a condition precedent to holding the election. As the state Tax Commission cannot well determine said question without complete financial data and details as to the proposed issuance of bonds, it is evident that said financial data and details must be before the said Tax Commission for their due consideration.

Former Sections 5649-9d and 5649-9e repealed by Section 21 of said House Bill No. 1, provided that before the issuance of bonds in certain cases could be submitted to popular vote the question of said submission should be first submitted to the Tax Commission of Ohio and if said Tax Commission found that the submission of said question at a special election was necessary to meet the requirements of the people of said subdivision, it should certify said fact together with its written consent to the

bond-issuing authorities desiring to have said special election called. It was also provided that whenever any board of education desiring to issue bonds which would make the net indebtedness created or incurred by the said school district as defined in Section 7630-2 of the General Code, exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, said board of education should submit to the Tax Commission of Ohio the question whether the issue of said bonds should be submitted to popular vote and no popular vote could be taken upon the question of issuing said bonds until the Tax Commission had given its written consent thereto in accordance with the provisions of said section.

Said section also provided that the Tax Commission should consider whether the interest and retirement charges on any such bonds would be unreasonably burdensome on the people of said school district. If they found they would not be so unreasonably burdensome they should certify to the board of education submitting the question, together with their written consent that said issue be submitted to popular vote. It is noted that under the provisions of said sections certain specific things were to be considered and determined by the Tax Commission before giving the consent of said Commission to said submission to popular vote of the question of issuing said bonds.

Former Section 5649-9f, also repealed by Section 21 of said House Bill No. 1, providing for the refunding of outstanding bonds, provided that before the bond-issuing authorities of any political subdivision could refund any outstanding bonds of the subdivision they should submit to the Tax Commission of Ohio the question whether said bonds should be refunded and in what manner. It was also provided that the Tax Commission of Ohio should consider whether any other method of payment in whole or part existed and whether it was necessary to refund the said bonds in whole or in part in order to effect the payment. If the Tax Commission found that no other method of payment in whole or part existed and that the refunding of said bonds was necessary, in order to effect the payment thereof, they should certify the said fact to the bond issuing authorities together with their written consent to the issuing of all or such part of said refunded bonds as they so found to be necessary.

It was also the duty of the Tax Commission to determine the maturities of the bonds to be issued subject to the provisions of Section 2295-12 of the General Code. The said bond-issuing authorities had power to borrow money to the amount certified by the Tax Commission for said purpose. It is noted that under the aforesaid provisions that certain specific matters were to be considered and determined before the Tax Commission gave its consent. You base your question upon the provisions of Section 2293-15 of the General Code and there are no specific provisions in said section defining just what the Tax Commission shall consider and determine before consenting or refusing to consent to submitting to popular vote of the proposed bond issue.

It is evident that when the legislature repealed the sections of the General Code defining the specific matters required to be considered and determined by the Tax Commission, and enacted the general provision that the question of the issue of said bonds could not be submitted to popular vote, "unless the Tax Commission of Ohio consents thereto," they intended to and did enlarge the powers of the Tax Commission over the issuance of bonds by boards of education.

The term "consent" comprehends more than the word "certify" as used in Section 1259-1 as amended, 112 O. L. page 384, wherein it is provided that:

"If the Tax Commission of Ohio certifies to the Director of Health that the municipal corporation is unable to comply with the provisions of the foregoing section without a vote of the electors by reason of existing debt and tax limitations, the Director of Health may find that an emergency exists requiring the immediate issue of bonds. * * * "

Under this section the Tax Commission is only required to certify the financial status of the taxing district and is not required to determine the necessity or advisability of the bond issue, or consent thereto.

Consent, as defined by Webster means :

“Capable, deliberate, and voluntary assent or agreement to or concurrence, some act or purpose, implying physical and mental power and free action.”

As stated in Bouvier's Law Dictionary :

“Consent supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers.”

The Tax Commission has now all of the powers granted to it under the sections of the General Code repealed by Section 21 of House Bill No. 1, and in addition the general power to consent or refuse to consent to said bond issue.

While the Constitution of Ohio does not provide for the limitation by state authorities of bond issues by boards of education, yet in Section 13 of Article XVIII of the Constitution, the people have provided that the legislature may pass laws to limit the power to levy taxes and incur debts for local purposes.

Section 13 of Article XVIII of the Ohio Constitution provides as follows :

“Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, * * * .”

This section does not apply to school districts, yet it is a clear indication that the people favor state supervision and control over local taxation.

It is therefore my opinion that when the Tax Commission is requested to consent to the submission to popular vote of the question of a bond issue by a school district, in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, said Commission, before giving or refusing its consent, should consider among other things :

- (a) The necessity for said proposed bond issue, in the light of the financial conditions of the school district.
- (b) The legality of said proposed bond issue.
- (c) The complete financial data and details as to the proposed issue of bonds, and
- (d) Whether the interest and retirement charges of the proposed issue of bonds will be unreasonably burdensome on the people of said district.

The Tax Commission taking these and other pertinent facts into consideration, should then determine, in the exercise of a reasonable discretion, whether or not it will consent or refuse to consent to permit the question of the issuance of the bonds to be submitted to the electors.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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OPINIONS

1105.

APPROVAL, BONDS OF PARIS TOWNSHIP RURAL SCHOOL DISTRICT,
PORTAGE COUNTY, OHIO—\$47,700.00.

COLUMBUS, OHIO, October 4, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1106.

APPROVAL, BONDS OF BETHEL TOWNSHIP RURAL SCHOOL DISTRICT,
MONROE COUNTY—\$1,800.00.

COLUMBUS, OHIO, October 4, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1107.

APPROVAL, BONDS OF MARION COUNTY—2 ISSUES—GEARHIZER
ROAD—\$8,330.00—DENZER ROAD—\$10,380.00.

COLUMBUS, OHIO, October 4, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1108.

APPROVAL, BONDS OF WARREN TOWNSHIP RURAL SCHOOL DISTRICT,
TRUMBULL COUNTY—\$8,000.00.

COLUMBUS, OHIO, October 4, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.