

ing to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4621.

APPROVAL, BONDS OF CITY OF LIMA, ALLEN COUNTY, OHIO,
\$25,000.00.

COLUMBUS, OHIO, September 17, 1932.

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

4622.

BOND ISSUE—SCHOOL GYMNASIUM CONSTRUCTED THROUGH PERSONAL NOTES OF RESIDENT TAXPAYERS—BOARD OF EDUCATION MAY NOT ASSUME LIABILITY AND ISSUE BONDS.

SYLLABUS:

Where it appears that the resident taxpayers of a school district had, by popular subscription and donation constructed a gymnasium on school property for the uses of the school district, and had donated the said building to the said district, and had given their personal note for the remaining portion of the cost of said building after the amounts raised by subscriptions and donations had been exhausted, the board of education of the district is without power to assume the obligations of said taxpayers on said note, and to issue bonds, either with or without a vote of the people, for the purpose of discharging that obligation.

COLUMBUS, OHIO, September 19, 1932.

HON. MARCUS McALLISTER, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion, which reads as follows:

“Approximately six years ago, taxpayers of Ross Township, Greene County, Ohio, by popular subscriptions and donations were able to raise sufficient funds to erect a gymnasium on the school property adjacent to the high school building; however, the funds raised from popular subscrip-

tions and donations were not sufficient to pay the entire costs on the gymnasium. In order to raise this money, several of the taxpayers of the township borrowed money from an individual, giving their personal note to him for this amount, which now has been reduced to \$3,000.00.

The Board of Education, since the erection of the Building, has had charge of the care and maintenance of the same; however, all the net proceeds from the athletic contests held in the gymnasium have always been paid over to the makers in order that the same could be applied to the principal and interest charges. In view of the fact that the note is long past due, the holder of the same has demanded payment.

Upon learning this, the makers on the note desired that the Board of Education assume this obligation and release them, the makers, from the obligations of the same. Of course the Board is not willing to do so. The makers thereupon requested that the Board of Education proceed to issue bonds for the purpose of paying this obligation which they themselves incurred.

As far as I can determine, the Board has done nothing which would make it liable in any respect for the obligation incurred by these few taxpayers. The Board of Education is not a party to the note.

The question therefore is: 'Can a Board of Education, under these circumstances, proceed to issue bonds by a vote of the people, for an improvement, the cost of which improvement has been assumed by individual taxpayers within the township?'

By the terms of the Uniform Bond Act (Sections 2293-1 et seq. of the General Code), any "subdivision" of the state, including all school districts except county school districts, is granted authority to issue bonds for the purpose of acquiring or constructing any permanent improvement which the subdivision is authorized to acquire or construct or for the payment of a final judgment or judgments rendered against the subdivision in actions for personal injuries or those based on other non-contractual obligations, providing the subdivision is unable to pay the said judgment or judgments within the limits of its funds available for that purpose.

Authority is also extended to those subdivisions to issue bonds for the refunding of outstanding bonds upon the approval of the Bureau of Inspection and Supervision of Public Offices, and to issue bonds under certain circumstances to pay deficiencies in current revenues, caused by the non-payment of taxes.

Section 2293-19, General Code, provides that the taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue.

It is well settled that a board of education has authority to submit to the electors of its district the question of issuing bonds of the district for some one or more of the purposes only that it is authorized to issue bonds and that it has power to issue such bonds only as such power is expressly conferred upon it by statute; no such power can be implied. The case of *Allard vs. Board of Education*, 101 O. S., 469, is definite and positive authority for each of these propositions.

An examination of the list of enumerated purposes for which bonds may be issued by a board of education discloses no purpose such as the payment of the balance due on the cost of a building constructed on school property by private subscription, or for money borrowed by third parties upon their personal note or notes for the purpose of paying for the erection of the said building.

Under the circumstances as described in your letter of inquiry, the board of

education in question is not empowered to assume the obligation of the makers of this note, and even if it could lawfully do so it would not have power to issue bonds to discharge the obligation. The board is not a party to this note and is not liable on the note and a judgment could not be obtained against the board on account of the note.

So far as appears, the residents of the district, or some of them, constructed this building and donated it to the board of education without any intention other than that it should be the property of the board of education. There was probably some arrangement made that receipts from athletic contests held in the building should be applied to that part of the cost of the building which was not paid for by subscription and donations, and it appears that the board of education has been permitting this to be done but that fact does not in any wise obligate the board of education to pay any portion of the note from public funds.

The board, no doubt, by virtue of its authority to construct suitable and necessary buildings for the needs of the district would have authority to construct a gymnasium building such as you describe and it would be regarded as a permanent improvement, as the term is used in the Uniform Bond Act. Bonds might be issued by the board of education for the purpose of constructing or acquiring such a building, and, if third parties owned such building, and the board desired to acquire it, there is no doubt but that bonds might be issued for that purpose. Here, the building was erected on the board's land, was attached thereto and so far as appears, became a fixture on said lands and thereby became the property of the board of education. If the building had been constructed on other lands, or the persons building it had by some lawful arrangement retained title to it until such time as they chose to convey it to the board either with or without consideration the board could now lawfully, if it saw fit, purchase it and issue bonds for that purpose, but that does not appear to have been the situation in this instance and it is therefore not necessary for the purposes of this opinion, to further consider that phase of the question.

In view of the situation as described by you in your letter of inquiry I am of the opinion that the board of education of the Ross Township Rural School District does not have the power to issue bonds by vote of the people or otherwise, for the purpose of paying the note in question or of reimbursing the makers of this note after they have paid the same.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4623.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND E. M. CARMELL COMPANY, OF COLUMBUS, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF HOT PROCESS WATER SOFTENING EQUIPMENT AND RETUBING HEATERS AT THE OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME, XENIA, OHIO, AT AN EXPENDITURE OF \$9,500.00—SURETY BOND EXECUTED BY THE SEABOARD SURETY COMPANY.

COLUMBUS, OHIO, September 19, 1932.

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

DEAR SIR:—You have submitted for my approval a contract between the State