

OPINION NO. 73-100

Syllabus:

1. The question of construction or improvement of a town hall, at a cost greater than ten thousand dollars, may be submitted to the electorate by a board of township trustees at any election.

2. The question of issuance of bonds to meet the cost of construction or improvement of a town hall must be submitted to the electorate by the board of township trustees, and may be so submitted at any election.

3. Both questions may be submitted at the same election.

To: Ronald J. Kane, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, October 12, 1973

Your request for an opinion presents the following two questions:

1. Section 511.01 of the Ohio Revised Code refers to an election but does not

specify whether a town hall issue be submitted at a general, primary or special election. Can it be submitted at any one or all of them?

2. Section 511.02 of the Ohio Revised Code says that "if a majority of all the ballots cast are in the affirmative the township trustees shall levy the necessary tax. . . . In anticipation of the collection of taxes, the board may borrow money and issue bonds for the whole or any part of such work. In view of the above is it necessary, where a township must issue bonds for the construction or improvement of a town hall, to have an election for the issuance of bonds under Section 133.02 of the Ohio Revised Code in addition to the Chapter 511 Revised Code election?"

Your first question concerns the election to authorize construction or improvement. Your second question asks whether the issuance of bonds to meet the costs of construction or improvement must also be submitted to the voters.

1. The answer to your first question depends on the interpretation of the word "election" in R.C. 511.01. That Section reads as follows:

If, in a township, a town hall is to be built, improved, enlarged, or removed at a cost greater than ten thousand dollars, the board of township trustees shall submit the question to the electors of such township, shall certify their resolution to the board of elections not later than four p.m. of the ninetieth day before the day of the election and shall cause the township clerk to give notice of an election on such question and of the estimated cost of the improvement, by written notices, posted, at least forty days prior to such election, in not less than three public places within the township. (Emphasis added.)

In interpretation of a Section of the Revised Code, the language in question must be read as it was enacted by the General Assembly. Seeley v. Expert, Inc., 26 Ohio St. 2d 61, 71-72 (1971); Moss v. Standard Drug Co., 159 Ohio St. 464, 468-469 (1953); Slingluff v. Weaver, 66 Ohio St. 621, 626-629 (1902). It is to be assumed that the legislature chose the language it used advisedly and intelligently. Cleveland Trust Co. v. Eaton, 21 Ohio St. 2d 129, 138 (1970); Schario v. State, 105 Ohio St. 535, 537 (1922). And the words of a statute must be construed as they are ordinarily understood and with the meaning commonly attributed to them. Youngstown Club v. Porterfield, 21 Ohio St. 2d 93, 96-97 (1970).

In R.C. 511.01 the general term "election" is used without qualification. The General Assembly was, of course, well aware that elections are of different types. Title XXXV of the Revised Code, which contains the controlling statutory provisions, begins by defining the various classes as "general elections", "regular municipal elections", "regular state elections", "special elections", and "primary elections". R.C. 3501.01. I conclude, therefore, that since the General Assembly used the general term

"election in enacting R.C. 511.01, it intended to permit a board of township trustees to submit a question of town hall construction to the voters at any election. This interpretation has been followed in the past without question, both by my predecessors and by the boards of elections. In Opinion No. 307, Opinions of the Attorney General for 1917, the issue of construction of a town hall was submitted to the voters at a general election. In Opinion No. 2404, Opinions of the Attorney General for 1934, it was assumed that a special election could be utilized for the same purpose.

2. If the result of the election is favorable to the proposed construction, the board of township trustees was originally authorized by R.C. 511.02 to levy the necessary tax, and to borrow money and issue bonds in anticipation of the tax collection. You ask whether R.C. 133.09 requires a further submission to the voters for approval of the bond issue.

The original power of a township to issue such bonds appears in the following language of R.C. 511.02:

At the election provided for by section 511.01 of the Revised Code, the electors of the township in favor of the building, removal, improvement, or enlargement of a town hall shall place on their ballots "Town Hall-Yes," and those electors opposed shall place on their ballots "Town Hall-No." If a majority of all the ballots cast at the election are in the affirmative, the board of township trustees shall levy the necessary tax, which, in any year, shall not exceed four mills on the dollar valuation. Such tax shall not be levied for more than seven years. In anticipation of the collection of taxes, the board may borrow money and issue bonds for the whole or any part of such work, which bonds shall bear interest to exceed seven per cent, payable annually. (Emphasis added.)

The language of this section, which was formerly G.C. 3396, has remained substantially the same for many years, as will be seen from the quotation in Opinion No. 933, Opinions of the Attorney General for 1918 at page 90. At first glance it would appear to give the board of township trustees authority to borrow the money and issue the bonds without further approval by the electorate.

However, in 1927, the General Assembly enacted the Uniform Bond Act in order to revise and codify the laws relating to the issuance of bonds by political subdivisions. 112 Ohio Laws, 364-386. Divers, The Uniform Bond Act of Ohio, 7 Cin. L. Rev. 139. The Act, now appears as the Uniform Bond Law in R.C. Chapter 133. The 1927 Act specifically repealed a long list of General Code sections covering the issuance of such bonds. 112 Ohio Laws, 385-386. Although G.C. 3396, the predecessor of R.C. 511.02, was not included in this list, an examination of the provisions of the Uniform Bond Law convinces me that R.C. 511.02 has been repealed, at least insofar as it covers the issuance of bonds by a township for a town hall.

The uniform Bond Law itself specifically gives a board of township trustees power to issue bonds to cover the costs of a town hall, and sets forth the procedures to be followed. Thus, under R.C. 133.01(A), townships are included among the subdivisions

covered by the Uniform Law. The authority of any subdivision to issue bonds for permanent improvements is contained in R.C. 133.24 which provides in pertinent part:

The taxing authority of any subdivision may issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct. * * *

The power of a township to incur bonded indebtedness is specifically limited, under R.C. 133.07, to two per cent of the total value of all property listed and assessed for taxation, and no such indebtedness is to be incurred except when authorized by the electorate. That Section provides:

The net indebtedness created or incurred by a township, exclusive of the bonds excepted in section 133.02 of the Revised Code and exclusive of county bonds issued in anticipation of township tax levies, shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation. No such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors.

The procedure for informing the voters of the indebtedness to be incurred is carefully prescribed in R.C. 133.09 which provides:

The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which said subdivision has power to issue. When it desires or is required by law to submit any bond issue to the electors, it shall pass a resolution declaring the necessity of such bond issue, fixing the date the issue shall be submitted to the electors, and fixing the amount, purpose, and approximate date, interest rate, and maturity, and also the necessity of the levy of a tax outside the limitation imposed by section 2 of Article XII, Ohio Constitution, to pay the interest on and to retire said bonds. The taxing authority shall certify such resolution to the county auditor at least one hundred ten days prior to the election at which it is desired to submit such questions. Thereupon and more than one hundred days prior to such election, the auditor shall calculate and certify to the taxing authority the average annual levy, expressed in dollars and cents for each one hundred dollars of valuation, throughout the life of the bonds which will be required to pay the interest on and retire such bonds, assuming that they are all issued in one series and that the amount of the tax list of such subdivision remains throughout the life of said bonds the same as the amount of the tax list for the current year, and if this is not determined, the estimated amount submitted by the

auditor to the county budget commission. Thereupon, if the county taxing authority desires to proceed with the issue of said bonds, it shall, not later than four p.m. of the ninetieth day before the day of such election, certify its resolution, together with the amount of the average tax levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, estimated by the auditor, and the maximum number of years required to retire the bonds, to the board of elections of the county which shall prepare the ballots and make other necessary arrangements for the submission of the question to the voters of the subdivision.

The question may be submitted to the voters at any type of election. R.C. 133.12. The Supreme Court has frequently pointed out the mandatory nature of the requirement that the voters be adequately informed by the ballot of the purpose for the issuance of the bonds. Schnoerr v. Miller, 2 Ohio St. 2d 121 (1965); Taft, J., concurring in State, ex rel. Commissioners v. Brown, 167 Ohio St. 71, 76-77 (1957).

Since the Uniform Bond Law places such specific restrictions on the authority of a board of township trustees to issue bonds, I conclude that the broad provision of R.C. 511.02 is no longer in effect, and that the question must be submitted to the electorate, unless the indebtedness to be incurred comes within the exceptions included in R.C. 133.02 to which reference is made in R.C. 133.07. Bonds issued for the construction or improvement of a town hall do not, however, come within any of these exceptions. A tax levied for such a purpose is not a special assessment, for the town hall is erected for the general benefit of the entire township and not for the local benefit of certain specific property. Domito v. Maunee, 140 Ohio St. 229, 231-232 (1942); Graham v. Day, 12 Ohio App. 2d 9, 10-12 (1967). The other exceptions are clearly inapplicable, and I conclude that the question of issuance of the bonds must be submitted to the electorate under R.C. 133.07 and 133.09. Several of my predecessors have similarly interpreted the Uniform Bond Law. Opinion No. 1281, Opinions of the Attorney General for 1927; Opinion No. 330, Opinions of the Attorney General for 1929; Opinion No. 809, Opinions of the Attorney General for 1929; Opinion No. 2914, Opinions of the Attorney General for 1940.

While the foregoing analysis requires voter approval on two questions, I can see no reason why both could not be decided at the same election. Thus, my conclusion need not cause any delay.

In specific answer to your request it is my opinion, and you are so advised, that:

1. The question of construction or improvement of a town hall, at a cost greater than ten thousand dollars, may be submitted to the electorate by a board of township trustees at any election.
2. The question of issuance of bonds to meet the cost of construction or improvement of a town hall must be submitted to the electorate by the board of township trustees, and may be so submitted at any election.
3. Both questions may be submitted at the same election.