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SCHOOL FOUNDATION LAW — HOUSE BILL 282, 93RD GENERAL ASSEMBLY—HOUSE BILL 701, 91ST GENERAL ASSEMBLY — INTEREST ON NOTES ISSUED BY BOARD OF EDUCATION — ACCRUED INTEREST — REFUNDING NOTES — DIRECTOR OF EDUCATION, AUTHORIZED TO ISSUE NOTES, SECTION 2293-81 G. C. ON OR BEFORE NOVEMBER 30, 1938 — BOARDS OF EDUCATION MAY NOT LAWFULLY ISSUE SUCH NOTES ON ANY SUBSEQUENT CERTIFICATION —FINAL DATE, LAWFUL ISSUANCE SUCH NOTES, NOVEMBER 30, 1939.

SYLLABUS:

1. *Interest on notes issued by a board of education under the authority of House Bill No. 282 of the 93rd General Assembly, which has accrued subsequent to January 1, 1939, may not be paid from moneys appropriated by the General Assembly of Ohio for the purpose of paying the accrued interest on notes issued pursuant to the provisions of said act unless at the time such notes were issued the board of education issuing the same had notes falling due which were issued under the provisions of House Bill No. 701 of the 91st General Assembly, or issued for the purpose of refunding notes so issued.*

2. *Authorization to issue notes as provided by section 2293-81, General Code, must have been given by the Director of Education to boards of education on or before November 30, 1938, and boards of education may not lawfully issue such notes on any certification made by the Director of Education subsequent to said date.*

3. *The final date upon which such notes may have been lawfully issued by boards of education was November 30, 1939.*

Columbus, Ohio, July 23, 1940.

Hon. E. N. Dietrich, Director of Education,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

"This Department is in process of paying interest on so-called refunding school notes issued under the authority of H. B. 282. H. B. 282 originally was enacted for the purpose of financing the deficit in the School Foundation Program and amended H. B. 701, as passed by the previous General Assembly.

While checking our records preparatory to paying the interest on the 282 notes, so-called, we find that several districts have issued notes under H. B. 282. These refunding notes were in fact original notes; that is, a refunding note was issued in cases where a previous note (one issued under H. B. 701) did not exist.

Will you please inform us as to whether or not in your opinion interest can be paid on such notes as above described, as were issued under the color of H. B. 282 where no original 701 note was issued?

The Director of Education, prior to November 30, 1938, issued certifications as to the amounts due the several school districts. It is upon these certifications that the districts that did borrow under 701, based their borrowing. Since that time a payment of $12\frac{1}{2}\%$ has been made upon such certificates, thereby reducing the amount due the district, but this reduction is not noted upon the face of the certificate. Will you also please furnish us with your opinion as to whether or not the Director of Education can today, and any time after today, issue his authorization or amended certificate to any school district permitting them to borrow the amount of the balance due on their certificate under 701 so that they then will be in a position to immediately take advantage of the opportunity to refund such notes as afforded under H. B. 282.

Will you also please furnish your opinion as to whether a district, holding a certificate dated November 30, 1938, or prior thereto, upon which a $12\frac{1}{2}\%$ payment has been made, can proceed to borrow originally under the provisions of H. B. 701 as amended by H. B. 282 using the certificates they are holding as the basis of their loan without any further authorization on the part of the Director of Education?"

House Bill No. 701, to which you refer in your letter, is an act which was passed by the 91st General Assembly (116 O. L. Pt. 2, page 356), and which was later codified as sections 2293-80 to 2293-86, General Code. Section 2293-80, which provides for the certification of the amounts which may be borrowed by boards of education, reads as follows:

"If the amount on deposit in the state treasury to the credit of the state public school fund, created by section 7595 of the General Code, is inadequate on any of the quarterly payment dates as provided by section 7595-1g of the General Code, to meet the full amount of the said certified quarterly payment to the school district, the auditor of state shall issue his warrants on the treasurer of state in favor of the respective districts for amounts which shall

be in the same relationship, proportionately, to the certified amounts as the actual amount in the state treasury to the credit of the state public school fund is to the total of the certified quarterly payments for all of the school districts of the state.

In case of such a contingency, the auditor of state, prior to the issuance of his warrants, shall certify to the director of education and the state controlling board, the actual amount of money deposited in the state treasury to the credit of the state public school fund.

Upon receipt of such certification, the director of education shall determine the amount due each school district in excess of the amount actually to be paid to the school districts out of funds then available in the state public school fund; and, upon determining such amounts, he shall certify the same to the board of education of each school district."

The authority for boards of education to borrow money and issue notes therefor is contained in sections 2293-81 and 2293-82 of the General Code, which read as follows:

Section 2293-81.

"In anticipation of the amount so certified, the board of education may borrow money not in excess of the amount so certified and may from time to time issue notes of the school district therefor."

Section 2293-82.

"Such notes shall be issued on forms provided by the director of education pursuant to a resolution of the board of education which set forth the amount of notes to be issued, the denomination thereof, the rate of interest to be paid, and that such notes are issued pursuant to this act, and a complete report covering the details of the issuance of such notes shall be filed with the director of education on such forms as he may prescribe."

The notes which are referred to in your letter as 282 notes were issued under authority of House Bill No. 282 of the 93rd General Assembly, (effective February 23, 1939.) By this act sections 2293-83, 2293-85 and 2293-86, General Code, were amended. Said sections or parts thereof, in so far as the same are pertinent hereto, read as follows:

Section 2293-83.

"Such notes shall be payable on or before one year from the date when the director of education shall authorize the district to

issue such obligation, shall bear interest from the date of issue at a rate not exceeding four per cent per annum, interest to be payable when notes are paid, shall be signed by the president and clerk of the board of education, and shall recite on their face that they are issued pursuant to this act and the resolution authorizing the same.

The notes may be sold by the board of education at private sale for not less than par and accrued interest."

Section 2293-85.

"The principal of such notes shall be redeemed and paid by the boards of education issuing the same as provided in this act; the interest on such notes accrued prior to January 1, 1939, shall be paid from the general fund by the board of education issuing the same, pursuant to the resolution authorizing said notes and appropriating money from the general fund for such purpose; and the interest accruing thereafter shall be made available and paid as provided in this act."

Section 2293-86.

"The director of education is hereby prohibited from making further certifications under the provisions of section 2293-80 of the General Code and boards of education are hereby prohibited from issuing notes as provided by section 2293-81 of the General Code on any certification made by the director of education subsequent to the certification as of November 30, 1938.

It is the declared intent and purpose of this act to make provision for the payment to the school districts of the state of certain amounts due such districts from the state public school fund and with respect to which amounts certifications were made on or prior to November 30, 1938, pursuant to section 2293-80 of the General Code; and to provide for the application of such amounts, when distributed, *to the payment and redemption of notes outstanding pursuant to such certifications and the interest accruing on such notes on and after January 1, 1939, and to the payment and redemption of any refunding notes issued pursuant to the provisions of this act, and the interest thereon.* There shall be appropriated from the general revenue fund of the state for payment each year such amounts as will provide for the ultimate payment to the school districts of the amounts owing by reason of said certifications of the director of education. Such annual appropriation shall be distributed to the several school districts in the ratio which such appropriation bears to the total amount then owing on the certifications issued under the authority of section 2293-80 of the General Code.

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A board of education having notes falling due which were issued under this act or pursuant to certifications under the pro-

visions of section 2293-80 of the General Code, may refund such notes for periods not exceeding two years and at interest not in excess of four per centum per annum. Refunding notes may be refunded for a like period at like interest, where no other means of payment exists. All notes issued pursuant to this act shall be subject to call after November 30th in any year by the board of education issuing such notes.

Refunding notes shall be issued on forms prescribed by the director of education, pursuant to a resolution of the board of education which shall set forth the amount of refunding notes to be issued, the maximum rate of interest to be paid, the date of maturity, and that such notes are issued pursuant to this act and the resolution authorizing such notes.

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The provisions of sections 2293-80 to 2293-85, both inclusive, of the General Code shall apply only to notes issued pursuant to certifications of the director of education under authority of section 2293-80, of the General Code and shall have no application to notes issued pursuant to the authority of this section."

(Emphasis the writer's.)

It will be noted that the latter section above quoted provides that interest accruing on and after January 1, 1939 on any outstanding notes issued pursuant to the certifications made under section 2293-80, General Code, and the interest on any refunding notes issued pursuant to the provisions of the act of which said section in its present form is a part, shall be paid from moneys appropriated from the General Revenue Fund of the state. As has already been pointed out, the act which embraced said section is House Bill No. 282 of the 93rd General Assembly. You state in your communication that in some instances notes were issued under the provisions of House Bill No. 282 where no previous notes, issued under House Bill No. 701, existed. Therefore, in order to determine whether such notes could be legally issued, it becomes necessary to ascertain the purposes for which refunding notes may be issued under the provisions of section 2293-86, General Code.

In this connection it will be observed that said section in specific terms provides:

"A board of education having notes falling due which were issued under this act or pursuant to certifications under the provisions of section 2293-80 of the General Code, may refund such notes for periods not exceeding two years * * *."

It is therefore apparent that the refunding notes authorized by said section

may be issued only (1) to refund notes issued under House Bill No. 282; (2) to refund notes which were issued pursuant to certifications under the provisions of section 2293-80, General Code.

Said section further provides that:

“Refunding notes may be refunded for a like period at like interest, where no other means of payment exists.”

Obviously, therefore, notes may be issued pursuant to the provisions of House Bill No. 282 only for the purpose of refunding notes which were issued conformable to certifications made under the provisions of section 2293-80 of the General Code, or for the purpose of refunding such refunding notes so issued.

Consequently, a board of education is rendered incompetent to issue notes under the provisions of House Bill No. 282, unless notes were previously issued by such board according to certifications made pursuant to the provisions of section 2293-80, *supra*; and the interest which has accrued on any notes which such board may have issued without such previously issued notes outstanding may not be paid from moneys appropriated by the General Assembly.

The answer to your second question is found in the language contained in the first paragraph of section 2293-86, *supra*. A reading thereof discloses that the Director of Education is now prohibited and has been since February 23, 1939 from making further certifications under the provisions of section 2293-80, General Code, and boards of education are prohibited from issuing notes as provided by section 2293-81, General Code (House Bill No. 701), on any certification made by the Director of Education subsequent to the certification as of November 30, 1938.

I come now to your third question. Pertinent thereto are the provisions of section 2293-83, General Code. Said section provides that:

“Such notes shall be payable on or before one year from the date when the director of education shall authorize the district to issue such obligations, * * *.”

Obviously, the authorization of the Director of Education to issue such notes is a certification made by him to boards of education under the provisions of section 2293-80, *supra*. I have pointed out that boards of education are pro-

hibited from borrowing originally and issuing notes on any certification made by the Director of Education subsequent to November 30, 1938. Therefore, any notes which were lawfully issued by boards of education under the authority of House Bill No. 701 must necessarily have been issued under the certificate of the Director of Education made on or prior to November 30, 1938. Manifestly, therefore, notes which are payable on or before one year from the date of such certification cannot conceivably be issued after November 30, 1939.

Summarizing, it is therefore my opinion that:

1. Interest on notes issued by a board of education under the authority of House Bill No. 282 of the 93rd General Assembly, which has accrued subsequent to January 1, 1939, may not be paid from moneys appropriated by the General Assembly of Ohio for the purpose of paying the accrued interest on notes issued pursuant to the provisions of said act unless at the time such notes were issued the board of education issuing the same had notes falling due which were issued under the provisions of House Bill No. 701 of the 91st General Assembly, or issued for the purpose of refunding notes so issued.

2. Authorization to issue notes as provided by section 2293-81, General Code, must have been given by the Director of Education to boards of education on or before November 30, 1938, and boards of education may not lawfully issue such notes on any certification made by the Director of Education subsequent to said date.

3. The final date upon which such notes may have been lawfully issued by boards of education was November 30, 1939.

Respectfully,

THOMAS J. HERBERT,
Attorney General.