

fact that the annual report of the corporation is not filed until after the stockholders have made their returns is, in my opinion, immaterial. Such stockholders are justified in assuming that the corporation, having in the preceding year made the election to pay annually as an Ohio corporation, will continue so to pay and evidence its renewed intention in the succeeding annual report. In the cases you cite, the reaffirmance of the election was made by the corporation in June of 1927, at the time fixed by law, and this action operated to exempt the stock from listing and clearly made the omission of it proper. Should a foreign corporation in any instance fail to so reaffirm and Ohio stockholders have already filed their returns omitting the stock of such corporation, there is authority in the county auditor to make the necessary correction in the returns.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1606.

MUNICIPAL UNIVERSITY--BOARD OF DIRECTORS MAY BY RESOLUTION ASSUME CONTROL OF FUNDS DERIVED FROM BOND ISSUE BY MUNICIPALITY FOR UNIVERSITY PURPOSES.

SYLLABUS:

Under the provisions of Sections 7909 and 7910, General Code, as amended (112 O. L. 105, and 112 O. L. 364, 380), the board of directors of a municipal university may, by the adoption of a resolution for the purpose, assume control of funds derived from the sale of bonds issued by the municipal corporation for constructing, improving or equipping buildings of such municipal university, and require the same to be paid over to such board.

COLUMBUS, OHIO, January 20, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication in which you refer to Sections 7909 and 7910, General Code, as amended by the last General Assembly, relating to the funds of municipally owned universities and colleges and request my opinion on the question therein stated, as follows:

“When bonds are authorized and sold by a city council for university purposes must such funds be paid over to the board of directors of the university, following the adoption of a resolution to that effect by such board?”

I assume that the funds referred to in your question refer to those derived from the issue and sale of bonds for the purpose of constructing or improving buildings of a municipally owned university or college; for I know of no statutory provision authorizing a municipal corporation to issue bonds for any other purpose with respect to the affairs of a university or college owned and controlled by such municipal corporation.

Section 7909, General Code, as amended, 112 O. L. 105, was passed March 31, 1927, approved by the governor April 13, 1927, and became effective July 12, 1927. Section 7910, General Code, was amended as a part of the Uniform Bond Act, 112 O. L. 364,

389), passed April 21, 1927, approved by the governor May 11, 1927, and became effective August 10, 1927. Sections 7909 and 7910, General Code, read as follows:

Sec. 7909: "Such levies shall be made by the council at the time, and in like manner as other levies for other municipal purposes, and must be certified by it and placed upon the tax duplicate as other municipal levies. The funds of any such university, college or institution shall be paid out by the treasurer upon the order of the board of directors and the warrant of the auditor; provided, however, that the board of directors of any such municipal university, college or institution may assume control and custody of such funds, by adopting a resolution to that effect, whereupon said funds upon receipt of the same by the treasurer of the municipal corporation shall be paid over by him to the said board of directors upon the warrant of the auditor, and thereafter the possession and disbursement of said funds shall be subject to the order of said board."

Sec. 7910: "The taxing authority of a municipal corporation having a university supported in whole or in part by municipal taxation may provide for the construction, improvement, enlargement, equipping and furnishing of buildings for such municipal university. In the use of funds provided for such purposes, whether from taxation or the issue of bonds, all power and control shall be vested in the board of directors of the municipal university. Such board shall make all contracts necessary for the construction, improvement, enlarging, equipping and furnishing of the buildings specified and the equipment thereof; supervise their erection, completion and equipment and issue proper vouchers for the payment out of such fund of money due under such contracts and for any other expenses connected with the erection, completion and equipment of such building."

From every point of view Section 7910, General Code, as amended, is the later statute; and if there be any irreconcilable conflict between the provisions of this section and those of Section 7909, General Code, effect must be given to the provisions of the later statute as against the conflicting provisions, if any, of said Section 7909, General Code. Moreover, inasmuch as the provisions of said Section 7910, General Code, are special and apply only to funds of a municipally owned university of a particular kind, to-wit, those derived from the issue and sale of bonds for the construction, improvement or equipment of municipal university buildings, effect must be given to the provisions of this section rather than to any incompatible provisions in Section 7909, General Code, which Section is general in its provisions and by its terms applicable to all funds of a municipally owned university. *State ex rel. vs. City of Cleveland*, 115 O. S. 484, 488. These sections, however, must be read together and so far as possible effect must be given to the provisions of each in their application to the question here presented.

With respect to the question submitted, Section 7909, General Code, provides that the board of directors of any municipal university, college or institution may, by the adoption of a resolution to that effect, assume control and custody of the funds of such university, college or institution, and thereafter the possession and disbursement of said funds shall be subject to the order of said board of directors. There is nothing in the provisions of this section which in any way limits the funds thus subject to the control of the board of directors of such municipal university or college to those of any particular source or kind; and, unless a different intent can be found in the provisions of Section 7910, General Code, or some other statute applicable to the consideration of the question here presented, the above noted provisions of Section 7909, General Code, must be deemed to be applicable to funds derived as the proceeds

of bonds issued and sold by the municipal corporation for the purpose of constructing or improving buildings of such municipal university or college. Section 7910, General Code, above noted, authorizes a municipal corporation having a university supported in whole or in part by municipal taxation to provide for the construction, improvement, enlargement, equipment and furnishing of buildings for such municipal university. With respect to the funds provided by the municipal corporation for such purpose, this section directs that in the use of such funds, whether derived from taxation or the issue of bonds, all power and control shall be vested in the board of directors of the municipal university. There is nothing in the provisions just noted which is in any way incompatible with the above noted provisions of Section 7909, General Code, in their application to the question submitted by you. The only suggestion of a doubt with respect to the power and authority of the board of directors of a municipal university or college to assume control over the funds derived as the proceeds of bonds issued and sold for building construction or improvement purposes, and thereafter to disburse the same, arises from the provision of said Section 7910, General Code, which authorizes such board of directors to supervise the erection, completion and equipment of buildings of such municipal university or college and to "issue proper vouchers for the payment out of such fund of money due under such contracts and for any other expenses connected with the erection, completion and equipment of such building." Ordinarily, in the disbursement of public monies in the construction of public buildings or improvements, vouchers for labor and material in the construction and improvement of such buildings or structure are issued by some officer, board or authority other than the officer, board or authority who disburses the money in payment of such voucher. In its general significance a voucher means a paper or other thing which serves to vouch the truth of accounts or to confirm and establish facts of any kind and when used in connection with the disbursement of monies, it means some instrument that shows on what account or by what authority a particular payment is to be made, or that services, materials or supplies have been performed or furnished which entitle the party to whom it is issued to payment, which upon surrender for payment may be filed away by the officer or authority making the disbursement for his own protection and that of the public. *First National Bank of Chicago vs. City of Elgin*, 136 Ill. App. 453, 465; *People ex rel. vs. Swigert*, 107 Ill. 495.

Even in this view as to the meaning of the term "voucher" as employed in Section 7910, General Code, there is nothing in the provision of Section 7910, General Code, authorizing the board of directors to issue such vouchers to persons furnishing labor, material or supplies in the construction, improvement or equipment of the buildings of the university or college inconsistent with Section 7909, even though the vouchers are surrendered to said board when payment thereof is made. Such vouchers when surrendered for payment and filed away will serve a useful purpose by showing the services, material or other consideration for which payments are made by the board of directors, and thus be a protection both to such board and to the public. Moreover, the term "vouchers," as used in Section 7910, General Code, when construed in connection with its context, may reasonably be held to mean the warrants or checks by which disbursements are actually made by the board. In this view there is nothing whatever in Section 7910, General Code, which in the most remote way suggests any doubt as to the power and authority of the board of directors to assume control over funds realized from the issue and sale of building bonds by the municipal corporation, and to disburse the same. In conclusion I may say that I find nothing whatever in the provisions of Section 7910, General Code, at all incompatible with the general power and authority granted in the premises by the provisions of Section 7909, General Code. Even if Section 7910, General Code, were not, in itself, sufficient to warrant an affirmative answer to your question, the provisions of this section read together with those of Section 7909, General Code, and with those of Section 7918, General Code,

relating to the control of trust funds of a municipal university or college, clearly indicate a legislative intention to confer upon the board of directors of such municipal university or college power and authority to assume control of all of the funds of such institution, and to disburse the same.

I am therefore of the opinion, in answer to your question, that the board of directors of a municipal university may, by the adoption of a resolution for this purpose, require funds from the issue and sale of bonds for university building construction, improvement or equipment purposes, to be paid over to such board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1607.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE AUSTIN COMPANY, CLEVELAND, OHIO, FOR THE CONSTRUCTION OF AN OHIO STATE HANGAR NEAR CLEVELAND, OHIO AT AN EXPENDITURE OF \$55,830.00—SURETY BOND EXECUTED BY THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

COLUMBUS, OHIO, January 20, 1928.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Adjutant General of Ohio, and Director of State Armories, and The Austin Company, of Cleveland, Ohio. This contract covers the construction and completion of an Ohio State Hangar to be erected near the city of Cleveland, Ohio, and calls for an expenditure of fifty-five thousand, eight hundred and thirty dollars (\$55,830.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the Secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the monies appropriated by the 87th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the Fidelity and Deposit Company of Maryland appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating 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,
EDWARD C. TURNER,
Attorney General.