

“That rule applied to the present case would render two of the three banks of the district clearly ineligible, and as a necessary consequence would prevent the letting of the contract to the third bank unless banks outside of the district were also permitted to bid, since there could be no competitive bidding within the district if only one bank therein was eligible.”

In view of the foregoing, I am of the opinion that a village council may select and use a local bank as a depository even though one or more members of the village council are also members of the board of directors of such bank.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1414.

APPROVAL, FORMS FOR TRANSFER OF LEASES TO DAYTON CANAL LANDS.

COLUMBUS, OHIO, December 22, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date, submitting for my approval two forms for the transfer of existing leases on certain abandoned Miami and Erie canal lands situated within the city of Dayton, Ohio, and certain of said abandoned canal lands lying contiguous to said city. The assignment of said leases is being made pursuant to the provisions of House Bill No. 162 passed by the 86th General Assembly on the 25th day of March, 1925, and found in 111 O. L. at pages 208 to 214, both inclusive.

The assignment of the various individual leases is also being made pursuant to leases Numbers 1 and 2 which are general in their nature and refer to all leases now existing on the abandoned canal lands aforesaid. Said leases Numbers 1 and 2 are dated November 1, 1927, and are recorded in Volume No. 619, pages 25 and 33, respectively, of the deed records of Montgomery County, Ohio.

I have prepared two forms for the assignment of the leases contained in the schedule of leases in 1 and 2, as hereinbefore referred to in this opinion, and I am enclosing them herewith.

If the assignments of said leases are made upon the forms herein submitted, I will formally approve each of the various transfers of leases as soon as they are submitted to me.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1415.

BOARD OF EDUCATION—ISSUANCE OF BONDS AFTER JULY 6, 1927—
PUBLICATION OF NOTICE OF ELECTION FOR LESS THAN STATU-
TORY PERIOD—ELECTION INVALID WHERE BOND MATURITIES
EXCEED LIMITS OF SECTION 2293-9, GENERAL CODE.

SYLLABUS:

1. *Where proceedings for an issue of bonds by a board of education were begun on July 6, 1927, such proceedings must conform to the provisions of House Bill No. 1*

of the 87th General Assembly, (112 O. L. 364), known as "The Uniform Bond Act."

2. *The effect of a publication of a notice of election on a bond issue for a period less than that required by statute and the effect of irregularities in said notice of election are questions for determination by a proper court, upon consideration of all the facts.*

3. *The maturities of bonds issued for the construction or acquisition of improvements cannot exceed the maturities set out in Section 2293-9, General Code, and where a ballot voted on at an election on a bond issue specifies a tax levy calculated on the basis of maturities in excess of those set out in said section, such election is of no effect to authorize the issuance of such bonds.*

COLUMBUS, OHIO, December 22, 1927.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication under date of November 28, 1927, requesting my opinion upon the following:

"Under the new bond act, H. B. 1, 112 O. L. 364, et seq., I beg to submit the following facts prevailing in the matter of our Centerville Rural School District, and ask you as to the legality of the proceedings to date. It might be proper to state that an action will be brought to enjoin their issue.

House Bill No. 1 became effective August 10, 1927; on July 6, 1927, the board passed the resolution requesting clerk to certify estimated life of the proposed improvement and the maximum maturity of bonds proposed to be issued, after submission to electors; on July 13 the clerk made such certification, certifying D, construction of non-fireproof building, 30 years,—just double the time prescribed by Section 2293-9 of said act; E, furnishing of school house, 20 years,—when it should have been 10 years; and giving the weighted average as 25 years. \$18,000.00 of the bonds for erecting non-fireproof building was certified as 30 years, furnishing at 20 years for \$2,000.00, and the weighted average of amounts proposed as 25 years.

On July 13, special meeting, resolution declaring necessity of bond issue, etc., 20 bonds at \$1,000.00 each, payable annually, Sept. 1, 1929, to Sept. 1, 1948.

On July 30, 1927, the county auditor certified the rate.

On Aug. 3, 1927, resolution was passed to submit to the Tax Commission of Ohio for permission to submit question to the electors, such permission being given by the commission under date of August 22, 1927.

NOTICE OF ELECTION was published first on October 13, and was published four times, the last being on Nov. 3, which was a little shy of 'four full weeks.'

Result of election, 161 for, 58 against.

Centerville Rural School District is part in Gallia and part in Jackson County, Ohio. Notice of election read, in part, 'to be held in the said Centerville Rural School District, of Gallia County, Ohio, at the regular places of voting therein in Gallia County, Ohio, on Tuesday the 8th day of November, 1927.'

I wish you to understand that part of this district is in Jackson County in which part there is a voting place; that there is also a voting place in the district in Gallia County. In the Gallia County portion there were 105 for the issue and 20 against. In Jackson County portion there were 56 for and 38 against, so that, in the whole district, there were 161 for the issue and 58 against it.

The Department of Industrial Relations have condemned the present building and issued an order against holding school in it after this year.

The questions raised are :

1. Were the proceedings of the board, begun on July 6, 1927, illegal, because begun subsequent to May 12, and prior to August 10, 1927, the dates of filing with the Secretary of State of House Bill 80, (Sec. 5625-39, 112 O. L. page 409), and August 10, the date it became effective?

2. Was publication, 4 insertions, same day of the week for four consecutive weeks prior to the date of election, the actual time from first publication *being less than four full weeks*, sufficient notice of election.

3. Would the failure to give notice that an election was to be held in Jackson County portion of said district invalidate the transaction, the vote in the Jackson County portion being, as above stated, 56 for and 38 against the issue?

4. Does the mistake in the proper weighting of years for the different classes of improvements, and the maximum term the bonds may run, as certified by the clerk, invalidate the proceedings?

In other words, should the Teachers' Retirement System take these bonds, or agree to take them, the foregoing defects showing in the transcript, would you pass it?

I have advised that I am of opinion all of the four questions raised, unless No. 2 would be an exception, disqualify, but it is a matter of such importance that I am anxious to have your opinion, so am asking that you kindly give us 'right of way' ahead of some other matters, if you can possibly do so, that the matter of issuing bonds may not be delayed."

Under date of November 29, I wrote you requesting a transcript of the proceedings of the board of education up to the present time, and under date of December 2, 1927, you replied that you were unable to get in touch with the clerk in order to get the full forms of resolutions, etc. Inasmuch as I do not have before me a transcript of the proceedings of the board of education of Centerville Rural School District, including copies of the various resolutions, together with minutes of the meetings at which the same were adopted, the certificate of the clerk as to weighted average and maximum maturity referred to in your letter, the county auditor's certificate as to rate, proof of publication of the notice of election, certified copy of the ballot used at the election and the proceedings on the canvassing of the vote, I am compelled to consider your questions in the light of the facts presented. I shall consider your questions in the order in which you have set them out in your communication.

In considering your first question, I note that you refer to Section 5625-39, General Code, which was enacted by the 87th General Assembly as a part of House Bill No. 80 (112 O. L. 391, 409). House Bill No. 80 provides for the levying of taxes by local subdivisions and their method of budget procedure, while the new law pertaining to the issuing of bonds is found in House Bill No. 1 of the 87th General Assembly, passed April 21, 1927, filed in the office of the Secretary of State May 12, 1927, and effective August 10, 1927. House Bill No. 1, (112 O. L. 364), is known as "The Uniform Bond Act" and it is the provisions of that act which must be considered in answering your questions rather than House Bill No. 80. Your attention is directed to Section 20 of House Bill No. 1, which provides :

"Bonds issued prior to the effective date of this act and bonds issued after said date, which have been approved by vote of the people, or by resolution of the taxing authority prior to the day this act is filed with the Secre-

tary of State, shall be valid obligations of the taxing district issuing the same if they would be valid under the provisions of law in effect prior to the passage of this act. Bonds which have been approved by vote of the people, prior to the effective date of this act, may be issued thereafter under the provisions of Section 2293-25 to 2293-29 inclusive. Tax levies, in anticipation of which any such bonds have been issued, shall be levied notwithstanding the repeal of the law authorizing such levies."

In view of the fact that the proceedings to which you refer were not started until July 6, 1927, and the bonds were not voted on until the November, 1927, election, it is clear that the bonds are not among those mentioned in Section 20, supra, and that the procedure to be followed in issuing said bonds must be that prescribed in House Bill No. 1 above referred to. The bond issue is not necessarily illegal because the proceedings were begun on July 6, 1927, if the transcript shows that the procedure set in House Bill No. 1 has been followed. In other words, the bonds not having been issued prior to August 10, 1927, the effective date of House Bill No. 1, nor having been approved by a vote of the people or by a resolution of the taxing authority prior to May 12, 1927, the date of the filing of House Bill No. 1 in the office of the Secretary of State, the issuing of said bonds is controlled by the provisions of House Bill No. 1, and if the procedure therein set out is followed, the bonds will be valid obligations of the school district.

In regard to your second question, your communication states that the notice of election was published four times, the first publication appearing on October 13 and the last on November 3, 1927.

Section 2293-21, General Code, provides, in part:

"Notice of the election shall be published in one or more newspapers of general circulation in the subdivision once a week for four consecutive weeks prior thereto, stating the amount of the proposed bond issue, the purpose for which such bonds are to be issued, the maximum number of years during which such bonds shall run and the estimated average additional tax rate, outside of the fifteen mill limitation, as certified by the county auditor."

The above section requires publication of the notice of election in at least one newspaper of general circulation in the subdivision once a week for four consecutive weeks prior thereto. Under the facts, as stated in your letter, while the notice of election was published four times, the first publication appeared twenty-six days prior to the election, a little short of four full weeks.

In the case of *City of Cincinnati vs. Puchta, Mayor*, 94 O. S. 431, the question presented was whether or not the publication of a notice of election for four consecutive weeks, covering the period of twenty-six days prior to the election, legally complied with Section 3946, General Code, which required thirty days' notice of the election in one or more newspapers printed in the municipality once a week for four consecutive weeks prior thereto. The Supreme Court held that the statute was substantially complied with and the validity of the election was upheld. On page 432 of the opinion, it was said:

"The chief purpose of this statute is evident, to-wit, four weekly publications. And these were made. We do not hold that in all cases such would be a sufficient compliance with the law, but in the absence of any allegation here that anybody was denied the right to vote, by reason of the statute not being literally complied with for the full thirty days, the regularity of the election proceedings is upheld."

The sufficiency of advertising for bids for construction work was attacked in the case of *State vs. Kuhner and King*, 107 O. S. 406. The second branch of the syllabus reads:

"The requirement of Section 1206, General Code, that 'the state highway commissioner shall advertise for bids for two consecutive weeks,' is mandatory, and a contract entered into on June 14, after advertisement in two weekly newspapers of the county on June 6 and June 13, is invalid."

On page 415 of the opinion, the court said:

"Was this a compliance with the requirement of the section that 'the state highway commissioner shall advertise for bids for two consecutive weeks?' In our opinion the word 'for' has some significance as used in this statute, and applying the dictionary meaning thereof, which seems to us clearly indicated by the context as that most likely meeting the intent of the legislature, such advertisement is required 'during the continuance of' or 'throughout' the period of two weeks. * * * The evident purpose of our statute was to require not only two publications, but two weeks' notice, and it was contemplated that a period of two weeks would be allowed for filing bids from the date of the first publication."

In a recent case arising in the Common Pleas Court of Mercer County, involving an issue of bonds by Centerville Township Rural School District, one of the grounds urged for enjoining the issuance of said bonds was the insufficiency of the publication of the notice of election. It appeared that there being no newspaper published in the district, the clerk posted copies of the notice of election in eight public places in the district for the full time required by law and published said notice in a newspaper of general circulation in the district on October 15, 16, 17, 19 and 20, 1925, and in another newspaper on October 23 and 30, 1925. It also appeared that posters setting forth the necessity of the proposed issue of bonds, the amount of the levy, etc., were distributed generally to the electors, an effort being made to get one into the hands of every elector, and the matter was generally discussed throughout the district. An injunction was allowed by the Common Pleas Court and the Court of Appeals of Mercer County in refusing the injunction and ordering the petition dismissed said:

"The proof by both plaintiff and defendant, shows such general knowledge by the electors, of the election, as to make of no legal consequence the failure to publish the newspaper notice required by the statute."

On October 26, 1927, the Supreme Court of Ohio overruled a motion to certify the record in the above case.

The net result of these cases is such as not to permit of answering your second question categorically. In my opinion the question is one for a determination by a proper court as to whether the electors had such general knowledge of the election that failure to publish for the statutory period was of no legal consequence, and further that the failure to publish for the statutory period did not result in a denial to anyone of his right to vote.

The answer to your second question answers your third. In other words, while the notice of election, as published, provided that the election was to be held "in the Centerville Rural School District, of Gallia County, Ohio, at the regular places of voting therein in Gallia County, Ohio, on Tuesday the 8th day of November, 1927," and although it appears that a portion of the school district is located in Jackson

County, there being a voting place in both the Jackson County and the Gallia County portions of the district, it also appears that there were fifty-six votes cast for and thirty-eight votes against the proposed bond issue in the Jackson County portion of the district. While the notice of election did not specifically state that the election would also be held in the Jackson County portion of the district, it does appear that ninety-four votes were cast in said portion for and against the proposed bond issue. It seems to me that unless it appears that a substantial part of the voters were deprived of their right to vote because of the failure to specify in the notice of election that said election would be held at the regular places of voting in Jackson County, in addition to those in Gallia County, a court would be unlikely to hold the election illegal on that ground. However, this is also a question to be passed upon by a proper court upon a consideration of all the evidence.

In connection with your fourth question, you state that on July 13, 1927, the clerk of the board of education certified to the board his estimate of the life of the proposed improvement and the maximum maturity of the bonds proposed to be issued. In such certification, the clerk certified the life of non-fireproof buildings as thirty years and the furnishings of such buildings as twenty years, giving the weighted average as twenty-five years. You further state that on July 13, 1927, at a special meeting, the board of education of the school district adopted a resolution declaring the necessity of the bond issue, etc., and providing for twenty bonds of one thousand dollars each, payable annually from September 1, 1929, to September 1, 1948, and that on July 30, 1927, the county auditor certified the rate. I do not have before me the certificate of the clerk of the board of education, the resolution adopted by the board of education or the certificate of the county auditor as to rate. I am therefore forced to assume that the county auditor estimated the average annual levy of taxes to provide for the retirement of the bonds and for interest upon the basis of a twenty year maturity. Nor do I have before me a certified copy of the ballot used at the election in order to determine whether or not the electors, in addition to authorizing the bonds, authorized a levy of taxes outside of the fifteen mill limitation, based upon a twenty year maturity of the bonds.

Section 2293-9, General Code, in part provides :

“The maturities of bonds, notes or other evidences of indebtedness issued by any subdivision shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments :

When issue for

* * * * *

Class (D) The construction or improvement of non-fireproof buildings or other structures, electric light equipment, police and fire alarm and telegraph systems, fifteen years ;

Class (E) Water meters, fire apparatus, road rollers, furniture and furnishings, machinery in garbage disposal plant, landscape planting, playground apparatus, sidewalks, curbs, gutters, and the construction, resurfacing, grading, or drainage of roads, highways, streets or alleys or improvements thereof by boulevard or white-way lighting system, ten years ;

* * * * *

Class (I) A single bond issue for a purpose which includes two or more of the foregoing classes, the average number of years of usefulness as

measured by the weighted average of the amounts proposed to be expended for said several classes in accordance with above table of maturities; such estimating and calculation of average to be made by the fiscal officer."

It is clear that since the maximum maturity of bonds for the construction or improvement of non-fireproof buildings cannot exceed fifteen years and that of bonds issued for furniture and furnishings cannot exceed ten years, the weighted average and maximum maturity of twenty-five years, as certified by the clerk, and of twenty years, as fixed in the resolution declaring the necessity of the bond issue, is far in excess of that permitted under Section 2293-9, *supra*. If the weighted average and maximum maturity had been properly certified under the provisions of Section 2293-9, General Code, the same would have been somewhere in the neighborhood of fourteen years, or six years less than the time fixed for the maturity of the bonds in the resolution of necessity above referred to.

It follows that if the county auditor had been furnished with the correct certificate as to weighted average and maximum maturity, his estimate of the average annual levy to retire said bonds and pay the interest thereon would have been considerably higher than that which he did, in fact, certify. And it further follows that the voters of the district who voted not only to authorize a bond issue but to authorize a tax against their property at a certain average rate, estimated, of course, might not have been willing to vote for the bond issue had the estimated average annual rate been higher than as certified in the instant case by the county auditor. The purpose of holding an election on a bond issue is not alone to authorize the issuance of the bonds but is also to get the consent of the electors to be taxed for the purpose of retiring the bonds and paying the interest thereon. If anything in connection with either of the above is misrepresented to the electors, either wilfully or otherwise, I am of the opinion that the bond issue must fail.

Answering your fourth question specifically, I am of the opinion that if the county auditor's certificate as to rate was based upon a twenty-year maturity of the bonds, as set out in the resolution declaring the necessity of the bond issue, and if the ballot provided for a levy of taxes estimated by the county auditor at a certain rate for a period of twenty years, bonds issued pursuant thereto would not be authorized under The Uniform Bond Act of Ohio and would therefore not be valid obligations of the school district, and if either the Retirement Board of the State Teachers' Retirement System or The Industrial Commission of Ohio should agree to purchase said bonds, this department would be forced to disapprove the transcript and advise against the purchase.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1416.

APPROVAL, BONDS OF THE CITY OF PAINESVILLE, LAKE COUNTY,
OHIO—\$11,585.71.

COLUMBUS, OHIO, December 22, 1927.