

274.

BONDS—FOR CONSTRUCTION OF DISTRICT HOSPITAL—MAY BE ISSUED BY COUNTY COMMISSIONERS WITHOUT VOTE OF ELECTORS—CONDITION.

*SYLLABUS:*

1. *The board of county commissioners of a county may issue bonds for such county's portion of the cost of the construction, repair, etc., of a district hospital, under the provisions of Section 3152, General Code.*

2. *Such bonds may be issued by the board of county commissioners of a county without a vote of the electors, providing the limitation of percentum of net indebtedness of such county, as prescribed in Section 2293-16, General Code, is not exceeded.*

COLUMBUS, OHIO, April 8, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This is to acknowledge your letter of recent date which is as follows:

"In behalf of the commissioners of Montgomery County permit me to inquire whether under Section 3152 of the General Code these commissioners may issue without a vote of the people, the bonds of the county to meet their share of the expenses incurred for the erection of buildings or for the purpose of enlarging, improving, or rebuilding of the District Tuberculosis Hospital as jointly organized and maintained by Montgomery and Preble Counties.

In the first draft of House Bill No. 1 in the 87th General Assembly it was proposed to amend above section but the bill in final form as enacted, omitted all reference to Section 3152 and left it just as it now reads (112 O. L. 364). It is true that Section 2435 of the General Code referred to in the last sentence of Section 3152 was repealed specifically but we believe that this section has no particular bearing upon the authority of the county to issue bonds under said Section 3152, General Code.

We would be glad to have your early opinion on this subject, as the joint board of commissioners are contemplating certain new buildings and improvements at the District Tuberculosis Hospital, the expense of which as appor- tioned to our county will probably have to be raised by a bond issue."

Section 3152, General Code, provides:

"The first cost of the hospital, and the cost of all betterments and additions thereto, shall be paid by the counties comprising the district, in proportion to the taxable property of each county outside of a municipality having a tuberculosis hospital as shown by their respective duplicates. To meet the expenses incurred in the purchase of a site and for the erection of buildings or for the purpose of enlarging, improving or rebuilding thereof, the commissioners may borrow such sum or sums of money as may be apportioned to the county, at a rate of interest not to exceed six per cent. per annum, and issue the bonds of the county to secure the payment of the principal and interest thereof. Such principal and interest shall be paid as provided in Section 2435 of the General Code. A statement shall be prepared quarterly showing the per capita daily cost for the current expenses of maintaining such hospital, including the cost of the ordinary repairs, and each county in

the district shall pay its share of such cost as determined by the number of days the total number of patients from such county have spent in the hospital during the quarter, but the sum paid by patients from such county for their treatment therein shall be deducted from this amount. The boards of commissioners of counties jointly maintaining a district hospital for tuberculosis shall make annual assessments of taxes sufficient to support and defray the necessary expense of maintenance of such hospital."

The only reference in Section 3152, General Code, to Section 2435 of the General Code, which latter section was repealed in 112 Ohio Laws, is to the effect that the principal and interest of bonds issued under the provisions of Section 3152 shall be paid as provided in Section 2435, General Code. Section 2435 provided that interest shall be paid semi-annually and that the principal shall be paid at the county treasury at such times as the commissioners prescribe within thirty years from the date of indebtedness. This section was repealed at the time of the enactment of the Uniform Bond Act, which provides for the payment of interest and maximum maturities of all county bonds. The only effect, therefore, of the reference in Section 3152 to the repealed Section 2435 is that Section 3152 is amended, in so far as principal and interest of bonds issued thereunder shall be paid as provided in the Uniform Bond Act. The authority given to county commissioners under Section 3152 to issue bonds for the payment of the principal and interest of money borrowed to meet the expenses incurred in the purchase of a site and the erection of buildings, etc., of a district hospital, still exists. A county "may issue bonds for its portion of the cost of the construction, repair, etc., of a district hospital (Section 3152)." Ohio Bonds, Robert F. Denison, 3d Ed.

Your second inquiry is whether or not bonds may be issued by the board of county commissioners under Section 3152, General Code, without a vote of the people. Section 2293-16, General Code, 112 Ohio Laws, 371, being part of the Uniform Bond Act, provides:

"The net indebtedness created or incurred by any county without vote of the electors shall never exceed a sum equal to one per cent of the first one hundred million dollars or part thereof of the tax list of the county plus one-half of one per cent of such tax list in excess of one hundred million dollars.

In ascertaining this limitation bonds issued prior to the effective date of this act for the construction, resurfacing, maintenance or repair of roads, including bonds theretofore issued under Section 1223 of the General Code, shall not be considered except as to the amount if any by which the amount of such bonds outstanding exceeds one per cent of the tax list of the county.

Within the foregoing limitation the net indebtedness created or incurred by a county to pay its share of the cost and expense of the construction, improvement, maintenance or repair of state highways without vote of the people shall never exceed one-half of one per cent of the tax list of the county; but in ascertaining said limitation bonds issued prior to the effective date of this act for such purposes shall not be considered except as to the amount, if any, by which the amount of such bonds outstanding exceeds one-half of one per cent of the tax list of the county.

Provided that, except by vote of the electors, bonds shall not be issued by any county in an amount exceeding twenty thousand dollars in any period of five years, for the acquisition, construction, improvement, enlargement or extension of any one county building, including the acquisition of a site therefor,

but this limitation shall not apply to buildings for a district consisting of two or more counties.

The total net indebtedness created or incurred by any county shall never exceed a sum equal to three per cent of the first one hundred million dollars or part thereof of the tax list, plus one and one-half per cent of the tax list in excess of one hundred million dollars. In ascertaining the limitations of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered:

(a) Bonds issued prior to April 29, 1902, or to refund, extend the time of payment or in exchange for bonds issued prior to April 29, 1902,

(b) Bonds issued heretofore to meet deficiencies in the revenue."

Your attention is particularly directed to the provisions that: First, excepting such bonds as need not be considered in ascertaining the net indebtedness of a county, as therein set forth, such unvoted indebtedness shall never exceed one per cent of the first one hundred million dollars of the tax list of the county, plus one-half of one per cent of the tax list in excess of one hundred million dollars; second, the twenty thousand dollar limitation on unvoted bonds, would not be applicable to your question as the buildings proposed to be constructed are for a district consisting of two counties.

It, therefore, appears that within the limitations prescribed in the foregoing section, bonds may be issued under the provisions of Section 3152, General Code, without a vote of the electors.

Specifically answering your questions, I am of the opinion that:

(1) The board of county commissioners of a county may issue bonds for such county's portion of the cost of the construction, repair, etc., of a district hospital, under the provisions of Section 3152, General Code.

(2) Such bonds may be issued by the board of county commissioners of a county without a vote of the electors, providing the limitation of percentum of net indebtedness of such county, as prescribed in Section 2293-16, General Code, is not exceeded.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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275.

DEPUTY COUNTY SURVEYOR—ASSISTANT—BOTH APPOINTED BY  
COUNTY SURVEYOR—WHEN AND HOW COMPENSATION IS PAID.

**SYLLABUS:**

1. *Under the provisions of Section 2981, General Code, the authority to appoint a deputy county surveyor or assistant is in the county surveyor, and not in the board of county commissioners.*

2. *When the county surveyor has appointed and fixed the compensation of such deputy within the appropriation made therefor by the board of county commissioners, the county auditor is authorized to pay the compensation of such deputy by warrants drawn on the county treasury in the manner provided by law.*